R23. Administrative Services, Facilities Construction and Management.

R23-2. Procurement of Architect-Engineer Services.

R23-2-1. Purpose and Authority.

(1) In accordance with Subsection 63-56-14(2), this rule establishes procedures for the procurement of architect-engineer services by the Division.

(2) The statutory provisions governing the procurement of architect-engineer services by the Division are contained in Title 63, Chapter 56 and Title 63A, Chapter 5.

R23-2-2. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63-56-5.

(2) The following additional terms are defined for this rule.

(a) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(b) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

(c) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(d) "Public Notice" means the notice that is publicized pursuant to this rule to notify architects and engineers of Solicitations.

(e) "Solicitations" means all documents, whether attached or incorporated by reference, used for soliciting information from architects and engineers seeking to provide architect-engineer services to the Division.

(f) "State" means the State of Utah.

(g) "Using Agency" means any state agency or any political subdivision of the state which utilizes the services procured under this rule.

R23-2-3. Register of Architectural/Engineering Firms.

(1) Architects and engineers interested in being considered for architect-engineer services procured by the Division under Section R23-2-19 may submit an annual statement of qualifications and performance data.

(2) The Division shall maintain a file of information submitted under Subsection (1).

R23-2-4. Public Notice of Solicitations.

The Division shall publicize its needs for architect-engineer services in the manner provided in Subsection R23-1-5(2). The public notice shall include:

(1) the closing time and date by which the first submittal of information is required;

(2) directions for obtaining the solicitation;

(3) a brief description of the project; and

(4) notice of any mandatory pre-submittal meetings.

R23-2-5. Submittal Preparation Time.

Submittal preparation time is the period of time between the date of first publication of the public notice, and the date and time set for the receipt of submittals by the Division. In each case, the submittal preparation time shall be set to provide architects and engineers a reasonable time to prepare their submittals. The time between the first publication of the public notice and the earlier of the first required submittal of information or any mandatory meeting shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular procurement as determined, in writing, by the Director.

R23-2-6. Form of Submittal.

The solicitation may provide for or limit the form of submittals, including any forms for that purpose.

R23-2-7. Addenda to Solicitations.

Addenda to the solicitation may be made in the same manner provided for addenda to the bidding documents in connection with Invitations for Bids set forth in Subsection R23-1-5(6) except that addenda may be issued until the selection of an architect or engineer.

R23-2-8. Modification or Withdrawal of Submittals.

(1) Submittals may be modified prior to the due dates established in the solicitation.

(2) Architects and engineers may withdraw from consideration until a contract is executed.

R23-2-9. Late Proposals and Late Modifications.

Except for modifications allowed pursuant to negotiation, any proposal or modification received at the location designated for receipt of submittals after the due dates established in the Solicitation shall be deemed to be late and shall not be considered unless no other submittals are received.

R23-2-10. Receipt and Registration of Submittals.

After the date established for the first submittal of information, a register of submitting architects and engineers shall be prepared and open to public inspection. Prior to award, proposals and modifications shall be shown only to procurement and other persons involved with the review and selection process.

R23-2-11. Disclosure of Contents of Submittals and References.

(1) Except as provided in this rule, submittals of the successful architect or engineer shall be open to public inspection after award of the contract. Submittals of architects and engineers who are not awarded contracts shall not be open to public inspection.

(2) The Solicitation may provide that certain information required to be submitted by the offeror shall be considered confidential and classified as protected if such information meets the provisions of Section 63-2-304 of the Government Records Access and Management Act.

(3) If the architect or engineer selected for award has requested in writing the non-disclosure of trade secrets and other proprietary data so identified, the Director shall examine the request to determine its validity prior to award of the contract. If the parties do not agree as to the disclosure of data in the contract, the Director shall inform the architect or engineer in writing what portion of the proposal will be disclosed and that, unless the architect or engineer withdraws the submittal, it will be disclosed.

(4) The Board finds that it is necessary to maintain the confidentiality of individual responses from persons who are contacted as references in order to avoid competitive injury and to encourage those persons to respond in an open and honest manner without fear of retribution. Accordingly, responses to requests for references are classified as protected records under the provisions of Subsection 63-2-304(2) and (6) and shall be disclosed only in summary form to persons involved with the review and selection of process. This Subsection (4) applies only to responses from references submitted by the architect or engineer.

R23-2-12. Selection Committee.

(1) The Board delegates to the director the authority to appoint a selection committee which may include representatives of the Board, the Division, the using agency, and architects, engineers and others of the general public.

(2) Each member of the selection committee shall certify as to his lack of conflicts of interest.

R23-2-13. Evaluation and Ranking.

(1) The selection committee shall evaluate the relative competence and qualifications of architects and engineers who submit the required information.

(2) The evaluation shall be based on evaluation factors set forth in the solicitation and may include:

(a) past performance;

(b) references;

(c) plans for managing and avoiding project risks;

(d) interviews; and

(e) other factors that indicate the relevant competence and qualifications of the architect or engineer.

(3) The evaluation may be conducted in two phases with the first phase identifying no less than the top three ranked firms to be evaluated further in the second phase unless less than three firms are competing for the contract.

(4) Numerical rating systems may be used but are not required.

(5) The evaluation committee shall rank at least the top three firms. Notice of the selection results shall be provided to each firm competing for the contract.

R23-2-14. Negotiation and Appointment.

The Director shall conduct negotiations as provided for in Section 63-56-44 until an agreement is reached.

R23-2-15. Role of the Board.

(1) The Board has the responsibility to establish and monitor the selection process. It must verify the acceptability of the procedure and make changes in procedure as determined necessary by the Board.

(2) At each regular meeting of the Board, the Division shall submit a list of all architect/engineer contracts entered into since its previous report and the method of selection used. This shall be for the information of the Board.

R23-2-16. Performance Evaluation.

(1) The using agency and staff from the Division shall evaluate the performance of the architectural/engineering firm.

(2) This rating shall become a part of the record of that architectural/engineering firm within the Division. The architectural/engineering firm shall be apprised in writing of their performance rating at the end of the project and may enter their response in the file.

R23-2-17. Emergency Conditions.

The Director, in consultation with the chairman of the Board, shall determine if emergency conditions exist and document his decision in writing. The Director may use any reasonable method of awarding contracts for architect-engineer services in emergency conditions.

R23-2-18. Direct Awards.

(1) The Director may award a contract to an architectural/engineering firm without following the procedures of this rule if:

(a) The contract is for a project which is integrally related to, or an extension of, a project which was previously awarded to the architectural/engineering firm;

(b) The architectural/engineering firm performed satisfactorily on the related project; and

(c) The Director determines that the direct award is in the best interests of the State.

(2) The Director shall place written documentation of the reasons for the direct award in the project file and shall report the action to the Board at its next meeting.

R23-2-19. Small Purchases.

(1) If the Director determines that the services of architects and engineers can be procured for less than $50,000, or if the estimated construction cost of the project is less than $500,000, the procedures contained in Subsection (2) may be used.

(2) The Director shall select a qualified firm and attempt to negotiate a contract for the required services at a fair and reasonable price. The qualified firm may be, but is not required to be, selected from the register of architectural and engineering firms provided for in Section R23-2-3. If, after negotiations on price, the parties cannot agree upon a price that, in the Director's judgment, is fair and reasonable, negotiations shall be terminated with that firm and negotiations begun with another qualified firm. This process shall continue until a contract is negotiated at a fair and reasonable price.

R23-2-20. Alternative Procedures.

(1) The Division may enhance the process whenever the Director determines that it would be in the best interest of the state. This may include the use of a design competition.

(2) Any exceptions to this rule must be justified to and approved by the Board.

(3) Regardless of the process used, the using agency shall be involved jointly with the Division in the selection process.

KEY: procurement*, architects, engineers
September 15, 2001 63A-5-103 et seq.
Notice of Continuation May 4, 2000 63-56-14(2)

R70. Agriculture and Food, Regulatory Services.
R70-410. Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes.
R70-410-1. Authority.

A. Promulgated under authority of Section 4-4-2.

B. Adopt by reference: The Utah Department of Agriculture and Food hereby adopts and incorporates by reference the applicable provisions of the regulations issued by the Agricultural Marketing Service, United States Department of Agriculture for grading and inspection of shell eggs and the Standards, Grades and Weight Classes for Shell Eggs, 7 CFR Part 56, May 1, 1991 edition.

R70-410-2. Application.

A. The Utah standards for quality of individual shell eggs contained in this subpart are applicable only to eggs that are the product of the domesticated chicken hen and are in the shell.

B. Interior egg quality specifications for these standards are based on the apparent condition of the interior contents of the egg as it is twirled before the candling light. Any type or make of candling light may be used that will enable the particular grader to make consistently accurate determination of the interior quality of shell eggs. It is desirable to break out an occasional egg to determine the Haugh unit value of the broken-out egg, compare the broken-out and candled appearance, thereby aiding in correlating candled and broken-out appearance.

R70-410-3. AA Quality.

The shell must be clean, unbroken, and practically normal. The air cell must not exceed 1/8 inch in depth, may show unlimited movement, and may be free or bubbly. The white must be clear and firm so that the yolk is only slightly defined when the egg is twirled before the candling light. The yolk must be practically free from apparent defects.

R70-410-4. A Quality.

The shell must be clean, unbroken, and practically normal. The air cell must not exceed 3/16 inch in depth, may show unlimited movement, and may be free or bubbly. The white must be clear and at least reasonably firm so that the yolk outline is only fairly well defined when the egg is twirled before the candling light. The yolk must be practically free from apparent defects.

R70-410-5. B Quality.

The shell must be unbroken, may be abnormal and may have slightly stained areas. Moderately stained areas are permitted if they do not cover more than 1/32 of the shell surface if localized or 1/16 of the shell surface if scattered. Eggs having shells with prominent stains or adhering dirt are not permitted. The air cell may be over 3/16 inch in depth, may show unlimited movement, and may be free or bubbly. The white may be weak and watery so that the yolk outline is plainly visible when the egg is twirled before the candling light. The yolk may appear dark, enlarged, and flattened, and may show clearly visible germ development but no blood due to such development. It may show other serious defects that do not render the egg inedible. Small blood spots or meat sports (aggregating not more than 1/8 inch in diameter) may be present.

R70-410-6. Dirty.

An individual egg that has an unbroken shell with adhering dirt or foreign material, prominent stains, or moderate stains covering more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered.

R70-410-7. Check.

An individual egg that has a broken shell or crack in the shell but with its shell membranes intact and its contents do not leak. A "check" is considered to be lower in quality than a "dirty".

R70-410-8. Terms Descriptive of Shell.

A. Clean. A shell that is free from foreign material and from stains or discolorations that are readily visible. An egg may be considered clean if it has only very small specks or stains, or such specks or stains are not of sufficient number or intensity to detract from the generally clean appearance of the egg. Eggs that show traces of processing oil on the shell are considered clean unless otherwise soiled.

B. Dirty. A shell which has dirt or foreign materials adhering to its surface, which has prominent stains, or has moderate stains covering more than 1/4 of the shell surface.

C. Practically Normal (AA or A Quality). A shell that approximates the usual shape and that is sound and is free from thin spots. Slight ridges and rough areas that do not materially affect the shape and strength of the shell are permitted.

D. Abnormal (B Quality). A shell that may be somewhat unusual or decidedly misshapen or faulty in soundness or strength or that may show pronounced ridges or thin spots.

R70-410-9. Terms Descriptive of the Air Cell.

A. Depth of Air Cell. (Air space between shell membranes, normally in the large end of the egg). The depth of the air cell is the distance from its top to its bottom when the egg is held air cell upward.

B. Free Air Cell (B Quality). An air cell that moves freely toward the uppermost point in the egg as the egg is rotated slowly.

C. Bubbly Air Cell (B Quality). A ruptured air cell resulting in any or more small separate air bubbles usually floating beneath the main air cell.

R70-410-10. Terms Descriptive of the White.

A. Clear. A white that is free from discolorations or from any foreign bodies floating in it. (Prominent chalazas should not be confused with foreign bodies such as spots or blood clots.)

B. Firm (AA Quality). A white that is sufficiently thick or viscous to prevent the yolk outline from being more than slightly defined or indistinctly indicated when the egg is twirled. With respect to a broken-out egg, a firm white has a Haugh unit value of 72 or higher when measured at a temperature between 45 degrees and 60 degrees F.

C. Reasonably Firm (A Quality). A white that is somewhat less thick or viscous than a firm white. A reasonably

firm white permits the yolk to approach the shell more closely which results in a fairly well defined yolk outline when the egg is twirled. With respect to a broken-out egg, a reasonably firm white has a Haugh unit value of 60 to 72 when measured at a temperature between 45 degrees and 60 degrees F.

D. Weak and Watery (B Quality). A white that is weak, thin and generally lacking in viscosity. A weak and watery white permits the yolk to approach the shell closely, thus causing the yolk outline to appear plainly visible and dark when the egg is twirled. With respect to a broken-out egg, a weak and watery white has a Haugh unit value lower than 60 when measured at a temperature between 45 degrees and 60 degrees F.

E. Blood Spots or Meat Spots. Small blood spots or meat spots (aggregating not more than 1/8 inch in diameter) may be classified as B quality. If larger, or showing diffusion of blood into the white surrounding a blood spot, the egg shall be classified as loss. Blood spots shall not be due to germ development. They may be on the yolk or in the white. Meat spots may be blood spots which have lost their characteristic red color or tissue from the reproductive organs.

F. Bloody White. An egg, the white of which has blood diffused through it. Such a condition may be present in new-laid eggs. Eggs with bloody whites are classed as loss.

R70-410-11. Terms Descriptive of the Yolk.

A. Outline Slightly Defined (AA Quality). A yolk outline that is indistinctly indicated and appears to blend into the surrounding white as the egg is twirled.

B. Outline Fairly Well Defined (A Quality). A yolk outline that is discernible but not clearly outlined as the egg is twirled.

C. Outline Plainly Visible (B Quality). A yolk outline that is clearly visible as a dark shadow when the egg is twirled.

D. Enlarged and Flattened (B Quality). A yolk in which the yolk membranes and/or moisture has been absorbed from the white to such an extent that the yolk appears definitely enlarged and flat.

E. Practically Free From Defects (AA or A Quality). A yolk that shows no germ development but may show other very slight defects on its surface.

F. Serious Defects (B Quality). A yolk that shows well developed spots or areas and other serious defects, such as olive yolks, which do not render the egg inedible.

G. Clearly Visible Germ Development (B Quality). A development of the germ spot on the yolk of a fertile egg that has progressed to a point where it is plainly visible as a definite circular area or spot with no blood in evidence.

H. Blood Due to Germ Development. Blood caused by development of the germ in a fertile egg to the point where it is visible as definite lines or as a blood ring. Such an egg is classified as inedible.

R70-410-12. General Terms.

A. Loss. An egg that is inedible, cooked, frozen, contaminated, or containing bloody whites, large blood spots, large unsightly meat spots, or other foreign material.

B. Inedible Eggs. Eggs of the following descriptions are classed as inedible: black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, eggs containing embryo chicks (at or beyond the blood ring stage), and any eggs that are adulterated as such term is defined pursuant to the Federal Food, Drug, and Cosmetic Act.

C. Leaker. An individual egg that has a crack or break in the shell and shell membranes and to the extent that the egg contents are exuding or free to exude through the shell.

R70-410-13. Utah (USDA) Grades and Weight Classes for Shell Eggs.

A. These grades are applicable to edible shell eggs in "lot" quantities rather than on an "individual" egg basis. A lot may contain any quantity of two or more eggs. Reference in these standards to the term "case" means 30-dozen egg cases as used in commercial practices in the United States. The size of the sample used to determine grade shall be on the following basis or as determined by the Supervisor: Whenever grading service is performed on a representative sample basis, such sample shall be drawn and consist of not less than the minimum number of cases as indicated in the following table. A minimum of one hundred eggs shall be examined per sample case. For lots which consist of less than 1 case, a minimum of 50 eggs shall be examined. If the lot consists of less than 50 eggs, all eggs will be examined.

TABLE
MINIMUM NUMBER OF CASES
COMPRISING A REPRESENTATIVE SAMPLE:

Cases in Lot:	Cases in Sample
1 case	1
2 to 10, inclusive	2
11 to 25, inclusive	3
26 to 50, inclusive	4
51 to 100, inclusive	5
101 to 200, inclusive	8
201 to 300, inclusive	11
301 to 400, inclusive	13
401 to 500, inclusive	14
501 to 600, inclusive	16

For each additional 50 cases or fraction thereof, in excess of 600 cases, one additional case shall be included in the sample.

B. Terms used in this part that are defined in the United States standards for quality of individual shell eggs have the same meaning in this part as in those standards.

C. Aggregate tolerances are permitted within each grade only as an allowance for variable efficiency and interpretation of graders, normal changes under favorable conditions during reasonable periods between grading, and reasonable variation of graders' interpretation.

D. Substitution of higher qualities for the lower qualities specified is permitted.

E. The percentage requirements for grades as set forth in 14 and 15 are applicable.

F. "No grade" means eggs of possible edible quality that fail to meet the requirements of an official U.S. Grade or that have been contaminated by smoke, chemicals, or other foreign material which has seriously affected the character, appearance, or flavor of the eggs.

G. U.S. Grade AA.

1. U.S. Consumer Grade AA (at origin) shall consist of eggs which are 87 percent AA quality. The maximum tolerance of 13 percent which may be below AA quality may consist of A or B quality in any combination, except that within the tolerance for B quality not more than 1 percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than 5 percent (7 percent for Jumbo size) Checks are permitted and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

2. U.S. Consumer Grade AA (destination) shall consist of eggs which are at least 72 percent AA quality. The remaining tolerance of 28 percent shall consist of at least 10 percent A quality and the remainder shall be B quality except that within the tolerance for B quality not more than 1 percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than 7 percent (9 percent for Jumbo size) Checks are permitted and not more than 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

H. U.S. Grade A.

1. U.S. Consumer Grade A (at origin) shall consist of eggs which are 87 percent A quality or better. Within the maximum tolerance of 13 percent which may be below A quality, not more than 1 percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than 5 percent (7 percent for Jumbo size) Checks are permitted and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

2. U.S. Consumer Grade A (destination) shall consist of eggs which are 82 percent A quality or better. Within the maximum tolerance of 18 percent which may be below A quality, not more than 1 percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than 7 percent (9 percent for Jumbo size) Checks are permitted and not more than 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

I. U.S. Grade B.

1. U.S. Consumer Grade B (at origin) shall consist of eggs which are at least 90 percent B quality or better, not more than 10 percent may be Checks and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

2. U.S. Consumer Grade B (destination) shall consist of eggs which are 90 percent B quality or better, not more than 10 percent may be Checks and not more than 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

J. Additional Tolerances - In Lots of Two or More Cases:

1. For Grade AA - No individual case may exceed 10 percent less AA quality eggs than the minimum permitted for the lot average.

2. For Grade A - No individual case may exceed 10 percent less A quality eggs than the minimum permitted for the lot average.

3. For Grade B - No individual case may exceed 10 percent less B quality eggs than the minimum permitted for the lot average.

4. For Grades AA, A, and B, no lot shall be rejected or downgraded due to the quality of a single egg except for Loss other than blood or meat spots.

K. Summary of Grades.

The summary of Utah Consumer Grades for Shell Eggs follows as Table I and II of this section.

TABLE I
Summary of Utah Consumer Grades for Shell Eggs

Utah Consumer Grade (Origin)	Quality Required(1)	Tolerance Percent	Permitted(2) Quality
Grade AA	87 percent AA	Up to 13 Not over 5	A or B(5) Checks(6)
Grade A	87 percent A or Better	Up to 13 Not over 5	B(5) Checks(6)
Grade B	90 percent B or Better	Not over 10	Checks
Utah Consumer Grade (Destination)	**Quality Required(1)**	**Tolerance Percent**	**Permitted(3) Quality**
Grade AA	72 Percent AA	Up to 28(4) Not over 7	A or B(5) Checks(6)
Grade A	82 percent A or Better	Up to 18 Not over 7	B(5) Checks(6)
Grade B	90 Percent B or Better	Up to 10	Checks

(1) In lots of two or more cases, see Table II of this section for tolerance for an individual case or carton within a lot.

(2) For the U.S. Consumer grades (at origin), a tolerance of 0.50 percent Leakers, Dirties or Loss (due to meat or blood spots) in any combination is permitted except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(3) For the U.S. Consumer grades (destination), a tolerance of 1 percent Leakers, Dirties, or Loss (due to meat of blood spots) in any combination is permitted, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(4) For U.S. Grade AA at destination, at least 10 percent must be A quality or better.

(5) For U.S. Grade AA and A at origin and destination within the tolerances permitted for B quality, not more than 1 percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects.

(6) For U.S. Grades AA and A Jumbo size eggs, the tolerance for Checks at origin and destination is 7 percent and 9 percent, respectively.

TABLE II
Tolerance for Individual Case or Carton Within a Lot

Utah Consumer Grade	Case Quality	Origin (percent)	Destination (percent)
Grade AA	AA (min)	77	62
	A or B	13	28
	Check (max)	10	10
Grade A	A (min)	77	72
	B	13	18
	Check (max)	10	10
Grade B	B (min)	80	80
	Check (max)	20	20

L. Weight Classes.

1. The weight classes for Utah Consumer Grades for Shell Eggs shall be as indicated in Table I of this section and shall apply to all consumer grades.

TABLE I
Utah Weight Classes for
Consumer Grades for Shell Eggs.

Size or Weight Class	Minimum Net Weight per Dozen	Minimum Net Weight per 30 Dozen At Rate Per Dozen	Minimum Weight for Individual Eggs
	Ounces	Pounds	Ounces
Jumbo	30	56	29
Extra Large	27	50-1/2	26
Large	24	45	23
Medium	21	39-1/2	20
Small	18	34	17
PeeWee	15	38	--

2. A lot average tolerance of 3.3 percent for individual eggs in the next lower weight class is permitted as long as no individual case within the lot exceeds 5 percent.

TABLE
SUMMARY OF UNITED STATES STANDARDS FOR
QUALITY OF INDIVIDUAL SHELL EGGS
Specifications for Each Quality Factor

Quality	AA Quality	A Quality	B Quality
Shell	Clean	Clean	Clean; to Slight Clean; to Stained.
	Unbroken	Unbroken	Unbroken.
	Practically Normal	Practically Normal	May be Abnormal
Air Cell	1/8 inch or less in depth	over 3/16 inch or less in depth	3/8 inch or less in depth
	Practically regular	Practically regular	May be free or bubbly
White	Clear	Clear	Clear
	Firm	May be reasonably firm	May be weak
Yolk	Outline slightly defined.	Outline may be fairly well defined.	Outline plainly visible.
	Practically free from defects.	Practically free from defects.	May be enlarged and flattened.
	May show clear		May show clearly visible germ development but not blood due to such development. May show other serious defects. Small blood spots or meat spots (aggregating not more than 1/8 inch in diameter may be present.)

*If they are small (aggregating not more than 1/8 inch in diameter).

For eggs with dirty or broken shells, the standards of quality provide three additional qualities. These are:

TABLE

Dirty	Check	Leaker
Unbroken. May be dirty.	Checked or cracked but no leaking.	Broken so contents are leaking.

R70-410-14. Cartons.

It shall be unlawful for any person to sell or offer for sale eggs in a carton or container on which there is evidence of adhering filth or contamination on the inside or outside of such carton; or in any used carton on which there is printed, other than the person so selling such eggs, or to sell or offer for sale any eggs that are not edible.

R70-410-15. Packaging Requirements.

The current Fair Packaging and Labeling Act requirements are applicable in labeling Shell Eggs. Eggs offered or exposed for sale for human consumption shall bear on every box, carton, or other container, suitable, plainly readable signs, labels, placards, upon which are plainly displayed with the eggs, the grade and size or weight class as is provided in the standards adopted by the Utah Commissioner of Agriculture and Food. Said grade and size class shall also be written upon the invoice of the wholesaler or dealer when sold by him to the retailer. Any advertisement or representation of eggs for sale shall plainly and conspicuously indicate the correct grade and weight. All such representations of the grade or quality and size or weight class shall be given in the full, correct and unabbreviated designation for size and quality of eggs according to the standards prescribed by the Commissioner of Agriculture and Food, and shall include the word "grade" along with the designations of quality and weight; such as "Grade A Large". Any advertisement or statement of grade of eggs shall be of such style and arrangement as to be plainly legible and readable under ordinary and usual conditions of sale.

R70-410-16. Nomenclature.

"Fresh," "country," "hennery," "ranch," or words of similar import shall not be deemed to be a substitute for grade designation. Eggs below the quality of Grade A shall not be represented as fresh eggs.

R70-410-17. Placement Requirements.

Statements of grade shall in no way be obscured by objects or designs placed in such a manner as to hide or interfere with readability.

R70-410-18. Label Requirement for Designations of Size and Quality.

Designations of size and quality required by these rules and by Section 4-4-4 shall be plainly and conspicuously placed in bold-faced, Gothic type letters not less than one inch in height on the outside top face of each container holding less than 15

dozen or more eggs and not less than one inch in height on one outside plainly visible surface of any other container holding 15 dozen or more eggs.

R70-410-19. Handling and Disposition of Restricted Eggs.

Restricted eggs shall be disposed of by one of the following methods at point and time of segregation:

A. Checks and dirties must be shipped to an official egg breaking plant for further processing to egg products. Dirties may be shipped to a shell egg plant for cleaning. Checks and dirties may not be sold to restaurants, bakeries and food manufacturers, not to consumers, unless such sales are specifically exempted by Section 15 of the Federal Egg Products Inspection Act and not prohibited by State Law.

B. Leakers, loss and inedible eggs must be destroyed for human food purposes at the grading station or point of segregation by one of the methods listed below:

1. Discarded and intermingled with refuse such as shells, papers, trash, etc.

2. Processed into an industrial product or animal food at the grading station.

3. Denatured or decharacterized with an approved denaturant. (Such product shipped under government supervision and received under government supervision at a plant making industrial products or animal food need not be denatured or decharacterized prior to shipment.)

4. Leakers, loss and inedible eggs may be shipped in shell form provided they are properly labeled and denatured by adding FD and C color to the shell or by applying a substance that will penetrate the shell and decharacterize the egg meat.

C. Incubator rejects (eggs which have been subjected to incubation) may not be moved in shell form and must be crushed and denatured or decharacterized at point and time of removal from incubation.

D. Blood type loss which has not diffused into the albumen may be moved to an official egg products plant in shell form without adding FD and C color to the shell provided they are properly labeled and moved directly to the egg products plant.

E. Containers used for eggs not intended for human consumption must be labeled with the word "inedible" on the outside of the container.

F. Other methods of disposition may be used only when approved by the Commissioner.

R70-410-20. Minimum Facility and Operating Requirements For Shell Egg Grading and Packing Plants.

A. General Requirements.

1. Building shall be of sound construction so as to prevent, insofar as practical, the entrance or harboring of vermin.

2. Grading and packing room shall be of sufficient size to permit installation of necessary equipment and the conduct of grading and packing in a sanitary manner. These rooms shall be kept reasonably clean during grading and packing operations and shall be thoroughly cleaned at the end of each operating day.

3. Adequate lavatory and toilet accommodations shall be provided; and toilet and locker rooms shall be kept in a clean and sanitary condition.

B. Grading Room Requirements. The grading room shall be adequately darkened to make possible accurate quality determination of the candled appearance of eggs.

1. There shall be no crossbeams of light, and light reflection from candling light shall be kept at a minimum.

2. Candling benches shall be constructed so as to permit cleaning and provide ample shelf space for convenient placement of the different grades to be packed.

3. The candling lights shall be capable of delivering reasonably uniform intensity of light at the candling aperture to facilitate accurate quality determination; and the lights shall provide ample case light for detection of stained and dirty shells and the condition of the packing material.

4. Individual egg scales shall be provided to check accuracy of weight classing.

5. Weighing equipment, whether manual or automatic, shall be kept reasonably clean and shall be capable of ready adjustments.

6. Adequate ventilation shall be provided.

R70-410-21. Processors.

A. Cooler rooms shall be provided and shall have refrigeration facilities capable of reducing within 24 hours and holding the maximum volume of eggs handled to 50 degrees F, if eggs are to be held not longer than one week. If eggs are held for longer periods than one week, refrigeration facilities sufficient to hold the eggs at 45 degrees F or below are required.

B. Cooler rooms shall be free from objectionable odors and from mold, and shall be maintained in a sanitary condition.

R70-410-22. Shell Egg Treating Operations.

Shell egg treating (oil processing) operations shall be conducted in a manner as will avoid contamination of the product and maximize conservation of its quality.

A. Oil having any off odor, or that is obviously contaminated, shall not be used in shell egg treatment.

B. Any shell eggs that are treated or sprayed shall be done with chemicals approved by the Utah Department of Agriculture and Food.

C. Any shell product used for treating or spraying eggs shall be clean and maintained in a sanitary condition.

D. Eggs with apparent moisture on the shell shall not be shell treated.

E. The processing oil shall always be warmer than the eggs.

F. Shell egg oil processing equipment shall be washed, rinsed, and treated with a bactericidal agent each time the oil is removed. It is preferable to filter and heat treat processing oil, and clean processing equipment daily when in use.

R70-410-23. Shell Egg Cleaning Operations.

A. Shell egg cleaning and equipment shall be kept in good repair and shall be cleaned after each day's use or more frequently if necessary.

B. The wash water temperature shall always be at least 20 degrees F. warmer that the eggs.

C. The wash water shall be replaced frequently and the detergent and sanitizer shall be kept at an effective level at all times.

D. Washed eggs shall be dry before casing.

R70-410-24. Retail Establishments.

A. All shell eggs received at retail outlets shall be placed in storage or in display cases immediately upon receipt and held at a temperature of 45 degrees F or lower. Storage facilities may be cabinet type or walk-in type coolers which permit free circulation of air and shall be equipped with an accurate thermometer indicating a representative air temperature.

B. All eggs in a retail outlet shall be held, stored and displayed under good sanitary conditions to avoid any contamination of the product.

C. All retail outlets shall employ the first-in first-out basis of inventory control.

R70-410-25. Ungraded Eggs.

A. The term "Ungraded Eggs" may not be used except for eggs sold at the farm where they are produced.

B. All ungraded eggs purchased by a retailer direct from a producer and sold by said retailer to the consumer from his establishment shall first be candled and must be graded into Utah consumer grades as established by the Utah Department of Agriculture and Food.

R70-410-26. Sale of Loose or Uncartoned Eggs.

All eggs sold or offered for sale as "loose eggs" or "uncartoned eggs" shall have a sign, placard, poster or other labeling device of adequate dimensions placed in a prominent and conspicuous position on the container in which the eggs are being offered for sale, showing the proper grade and weight designation, the name and address of the candler or the firm candling the eggs. Such grade and weight designation shall be in letters at least one inch in height.

R70-410-27. Check Quality Eggs.

Check quality eggs may be sold at the point of production or packing directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees.

A. The eggs shall not consist of any leakers or dirties.

B. There shall appear on the package or on a placard that can easily be seen by the purchaser a statement "It is recommended check eggs be thoroughly cooked before consuming", or a similar statement approved by the Commissioner of Agriculture and Food.

C. Check eggs are to be labeled with the date the eggs were produced.

R70-410-28. False or Misleading Labels or Containers.

A. No person shall use any device, mark, certificate or simulation thereof to detach, deface or destroy any device or mark used by another firm.

B. No labeling or container shall be used for shell eggs if it is false or misleading.

R70-410-29. Registered Brands.

A. Every egg dealer shall register with the Department each brand name which is intended for use by the dealer on a master container of eggs, other than a container made of corrugated fiber.

B. It is unlawful for a brand registrant or his authorized agent or employees to pack eggs into a master container which does not bear the registrant's brand or to transport or sell eggs in such container.

C. Any person who, without prior authorization, acquires possession of a master container which bears a brand belonging to someone else shall, at his own expense, return such container to the registered owner within 30 days.

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R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rules of the Division of Occupational and Professional Licensing.
R156-1-101. Title.

These rules are known as the General Rules of the Division of Occupational and Professional Licensing.

R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or these rules:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Cancel" or "cancellation" means nondisciplinary action by the division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment.

(3) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(4) "Denial of licensure" means action by the division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(5) "Disciplinary action" means adverse licensure action by the division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(6) "Diversion agreement" means a formal written agreement between a licensee, the division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(7) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a) and created under Subsection R156-1-404a.

(8) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(9) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the division under the authority of Subsection 58-1-108(2).

(10) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(11) "Inactive" or "inactivation" means action by the division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(12) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the division enforcement counsel, or if the division enforcement counsel is unable to so serve for any reason, the assistant director, or if both the division enforcement counsel and the assistant director are unable to so serve for any reason, the department enforcement counsel.

(13) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(14) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(15) "Nondisciplinary action" means adverse licensure by the division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(16) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the division under the authority of Subsection 58-1-203(6).

(17) "Private reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a private record.

(18) "Probation" means disciplinary action placing terms and conditions upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(19) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(20) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(21) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (19)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(22) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(23) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (19)(a), placed on a license issued to an applicant for licensure.

(24) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or

reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(25) "Revoke" or "revocation" means disciplinary action by the division extinguishing a license.

(26) "Suspend" or "suspension" means disciplinary action by the division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(27) "Surrender" means voluntary action by a licensee giving back or returning to the division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(28) "Temporary license" or "temporary licensure" means a license issued by the division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

(29) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-1-502.

(30) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of division concerns.

R156-1-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58.

R156-1-107. Organization of Rules - Content, Applicability and Relationship of Rules.

(1) The rules and sections in Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58.

(2) Rule R156-1 shall contain general provisions applicable to the administration and enforcement of all occupations and professions regulated in Title 58.

(3) The provisions of the other rules in Title R156 shall contain specific or unique provisions applicable to particular occupations or professions.

(4) Specific rules in Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.

R156-1-109. Presiding Officers.

In accordance with Subsection 63-46b-2(1)(h) and Section 58-1-109, except as otherwise specified in writing by the director, the designation of presiding officers is clarified or established as follows:

(1) The division enforcement counsel is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division enforcement counsel is unable to so serve for any reason, the assistant director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Except as otherwise specified in writing by the director, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as otherwise specified in writing by the director, the presiding officer for informal adjudicative proceedings initiated by a request for agency action are as follows:

(a) Director. The director shall be the presiding officer for the informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (i),(k), (l), (o), (q), and (t).

(b) Bureau managers. The bureau manager over the occupation or profession involved shall be the presiding officer for the informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (f), (h), (j), (p), (r) and (s).

(i) At the direction of the a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the format of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(c) Contested citation hearing officer. The contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(m).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(n).

(4) Except as otherwise specified in writing by the director, the presiding officer for informal adjudicative proceedings initiated by a notice of agency action shall be the division director.

R156-1-110. Issuance of Investigative Subpoenas.

(1) All requests for subpoenas in conjunction with a division investigation made pursuant to Subsection 58-1-106(3), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of

the division and the signature of the subpoena authority.

(2) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

R156-1-204. Board and Committee Meetings Open to Public - Notice of Board Meetings.

(1) Board and committee meetings shall be open to the public except when closed in accordance with Section 52-4-5.

(2) The notice of board and committee meetings required by Section 52-4-6 shall be provided as follows:

(a) Not later than the last working day of January of each year, the division shall publish a list of its anticipated board and committee monthly meeting schedule in the State Bulletin.

(b) Not later than the last working day of each calendar month the division shall post in a prominent and appropriate place within the building occupied by the division, a calendar containing the date, time, and place of all board and committee meetings scheduled for the next succeeding month. In addition, the division shall provide a copy to the media.

(c) Not later than the close of business of the business day preceding a meeting of any board or committee, the division shall post in a prominent and appropriate place within the building occupied by the division, a copy of the agenda for the board or committee meeting.

R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

(3) No peer or advisory committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer or advisory committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the division.

(7) Unless otherwise approved by the division, peer or advisory committee meetings shall be held in the building occupied by the division.

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act in behalf of the peer or advisory committee.

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory committee chairman. The division shall provide a division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-206. Emergency Adjudicative Proceeding Review Committees - Appointment - Terms - Vacancies - Removal - Quorum - Chairman and Secretary - Open and Public Meetings Act - Utah Administrative Procedures Act - Per Diem and Expenses.

(1) The chairman of the board for the profession of the person against whom an action is proposed may appoint the members of emergency review committees on a case-by-case or period-of-time basis.

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-204(3) through (13).

R156-1-301. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or

instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the division will again consider the applicant for licensure.

(4) Notification.

The division shall notify all proctors, test administrators and examinees of the rules concerning cheating.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee who holds an active in good standing license under Title 58 may apply for inactive licensure status.

(2) The following licenses issued under Title 58 may not be placed on inactive licensure status:

(a) Agency performing animal euthanasia;

(b) Analytical laboratory;

(c) Branch pharmacy;

(d) Certified professional accountant firm;

(e) Controlled substance;

(f) Controlled substance precursor distributors and purchasers;

(g) Cosmetologist/barber school;

(h) Employee leasing company;

(i) Funeral service establishment;

(j) Hospital, institutional, nuclear, out-of-state mail service and retail pharmacy;

(k) Licensed substance abuse counselor;

(l) Pharmaceutical manufacturer, researcher, teaching organization, wholesaler or distributor;

(m) Preneed funeral arrangement provider; and

(n) Veterinary pharmaceutical outlet.

(3) Applicants for inactive licensure shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

R156-1-308a. Renewal Dates.

(1) The following standard two-renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

(1)	Acupuncturist	May 31	even years
(2)	Advanced Practice Registered Nurse	January 31	even years
(3)	Animal Euthanasia Agency	May 31	odd years
(4)	Alternate Dispute Resolution Provdr	September 30	even years
(5)	Analytical Laboratory	May 31	odd years
(6)	Architect	May 31	even years
(7)	Athlete Agent	September 30	even years
(8)	Audiologist	May 31	odd years
(9)	Branch Pharmacy	May 31	odd years
(10)	Building Inspector	July 31	odd years
(11)	Burglar Alarm Security	July 31	even years
(12)	C.P.A. Firm	September 30	even years
(13)	Certified Shorthand Reporter	May 31	even years
(14)	Certified Dietitian	September 30	even years
(15)	Certified Nurse Midwife	January 31	even years

(16)	Certified Public Accountant	September 30	even years
(17)	Certified Registered Nurse Anesthetist	January 31	even years
(18)	Certified Social Worker	September 30	even years
(19)	Chiropractic Physician	May 31	even years
(20)	Clinical Social Worker	September 30	even years
(21)	Construction Trades Instructor	July 31	odd years
(22)	Contractor	July 31	odd years
(23)	Controlled Substance Precursor Distributor	May 31	odd years
(24)	Controlled Substance Precursor Purchaser	May 31	odd years
(25)	Cosmetologist/Barber	September 30	odd years
(26)	Cosmetology/Barber School	September 30	odd years
(27)	Deception Detection	July 31	even years
(28)	Dental Hygienist	May 31	even years
(29)	Dentist	May 31	even years
(30)	Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	July 31	even years
(31)	Electrologist	September 30	odd years
(32)	Electrologist Instructor	September 30	odd years
(33)	Electrology School	September 30	odd years
(34)	Environmental Health Scientist	May 31	odd years
(35)	Esthetician	September 30	odd years
(36)	Esthetician Instructor	September 30	odd years
(37)	Esthetics School	September 30	odd years
(38)	Factory Built Housing Dealer	September 30	even years
(39)	Funeral Service Director	May 31	even years
(40)	Funeral Service Establishment	May 31	even years
(41)	Genetic Counselor	September 30	even years
(42)	Health Care Assistant	November 30	even years
(43)	Health Facility Administrator	May 31	odd years
(44)	Hearing Instrument Specialist	September 30	even years
(45)	Hospital Pharmacy	May 31	odd years
(46)	Institutional Pharmacy	May 31	odd years
(47)	Landscape Architect	May 31	even years
(48)	Licensed Practical Nurse	January 31	even years
(49)	Licensed Substance Abuse Counselor	May 31	odd years
(50)	Marriage and Family Therapist	September 30	even years
(51)	Massage Apprentice, Therapist	May 31	odd years
(52)	Master Esthetician	September 30	odd years
(53)	Nail Technologist	September 30	odd years
(54)	Nail Technology Instructor	September 30	odd years
(55)	Nail Technology School	September 30	odd years
(56)	Naturopath/Naturopathic Physician	May 31	even years
(57)	Nuclear Pharmacy	May 31	odd years
(58)	Occupational Therapist	May 31	odd years
(59)	Occupational Therapy Assistant	May 31	odd years
(60)	Optometrist	September 30	even years
(61)	Osteopathic Physician and Surgeon	May 31	even years
(62)	Out of State Mail Order Pharmacy	May 31	odd years
(63)	Pharmaceutical Administration Facility	May 31	odd years
(64)	Pharmaceutical Dog Trainer	May 31	odd years
(65)	Pharmaceutical Manufacturer	May 31	odd years
(66)	Pharmaceutical Researcher	May 31	odd years
(67)	Pharmaceutical Teaching Organization	May 31	odd years
(68)	Pharmaceutical Wholesaler/Distributor	May 31	odd years
(69)	Pharmacist	May 31	odd years
(70)	Pharmacy Technician	May 31	odd years
(71)	Physical Therapist	May 31	odd years
(72)	Physician Assistant	May 31	even years
(73)	Physician and Surgeon	January 31	even years
(74)	Plumber Apprentice, Journeyman, Residential Apprentice, Residential Journeyman	July 31	even years
(75)	Podiatric Physician	September 30	even years
(76)	Pre Need Funeral Arrangement Provider	May 31	even years
(77)	Pre Need Funeral Arrangement Sales Agent	May 31	even years
(78)	Private Probation Provider	May 31	odd years
(79)	Professional Counselor	September 30	even years
(80)	Professional Engineer	December 31	even years
(81)	Professional Land Surveyor	December 31	even years
(82)	Professional Structural Engineer	December 31	even years
(83)	Psychologist	September 30	even years
(84)	Radiology Practical Technician	May 31	odd years
(85)	Radiology Technologist	May 31	odd years
(86)	Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years
(87)	Registered Nurse	January 31	odd years
(88)	Respiratory Care Practitioner	September 30	even years
(89)	Retail Pharmacy	May 31	odd years
(90)	Security Personnel	July 31	even years
(91)	Social Service Worker	September 30	even years
(92)	Speech-Language Pathologist	May 31	odd years
(93)	Veterinarian	September 30	even years
(94)	Veterinary Pharmaceutical Outlet	May 31	odd years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Certified Marriage and Family Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(b) Certified Professional Counselor Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(d) Professional Employer Organization licenses expire every year on September 30.

(e) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period which is extended or shortened by more than one month to establish or reestablish

a renewal period shall increased or decreased proportionately.

R156-1-308c. Renewal of Licensure Procedures.

The procedures for renewal of licensure shall be as follows:

(1) The division shall mail a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's automated license system. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee to maintain a current address with the division.

(3) Renewal notices shall specify the renewal requirements and require that each licensee document or certify that the licensee meets the renewal requirements.

(4) Renewal notices shall specify a renewal application due date at least 30 days prior to the expiration date shown on the licensee's license in order to permit the renewal applications to be processed prior to the expiration of licensure in accordance with Subsection 58-1-308(4).

(5) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(6) Renewal notices shall further advise each licensee that if the licensee fails to return the renewal application to the division or its designee by the renewal application due date, the licensee's license may expire before it is renewed.

(7) Renewal notices shall specify the address or addresses to where the renewal applications should be submitted.

(8) When a renewal application contains multiple parts to be returned to separate addresses, the division shall facilitate proper submission by using, to the extent resources permit, color coded renewal applications with perforated sections and return envelopes.

(9) Licensees licensed during the last four months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

R156-1-308d. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal or Reinstatement During Pendency of Adjudicative Proceedings, Audit or Investigation.

(1) Denial of renewal of licensure shall be classified as a formal adjudicative proceeding under Rule R156-46b.

(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the division's action as permitted by Subsection 63-46b-3(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(8).

(3)(a) When a renewal applicant or a reinstatement applicant under Subsections 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the division may conditionally renew or reinstate the applicant pending the completion of the audit or investigation.

(b) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally renewed or reinstated license.

(c) A conditional renewal or reinstatement shall not constitute an adverse licensure action.

(d) Upon completion of the audit or investigation, the division shall notify the renewal or reinstatement applicant whether the applicant's license is unconditionally renewed, reinstated, denied, or partially denied or reinstated.

(e) A notice of unconditional denial or partial denial of licensure to a licensee who the division determines may be conditionally renewed or reinstated shall include the following:

(i) that the licensee's unconditional renewal or reinstatement of licensure is denied or partially denied and the basis for such action;

(ii) the division's file or other reference number of the audit or investigation;

(iii) that the denial or partial denial of unconditional renewal or reinstatement of licensure is subject to review and a description of how and when such review may be requested;

(iv) that the licensee's license automatically will or did expire on the expiration date shown on the license, and that the license will not be renewed or reinstated unless or until the applicant timely requests review; and

(v) that if the licensee timely requests review, the licensee's conditionally renewed or reinstated license does not expire until an order is issued unconditionally renewing, reinstating, denying, or partially denying the renewal or reinstatement of the licensee's license.

R156-1-308e. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the division between the date of the expiration of the license and 31 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the division more than two years after the date the license expired and the

applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested;

(c) if the applicant has not been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the established license fee for a new applicant for licensure and the reinstatement fee; and

(d) if the applicant has been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the current license renewal fee multiplied by the number of renewal periods for which the license renewal fee has not been paid since the time of expiration of license, plus a reinstatement fee.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) submit documentation of prior licensure in the State of Utah;

(b) submit documentation that the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(c) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(d) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested;

(e) pass a law and rules examination if such an examination has been adopted for the occupation or profession to which the application pertains; and

(f) pay the established license renewal fee and the reinstatement fee.

R156-1-308f. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

R156-1-308g. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted or Probationary Status - Requirements.

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted or probationary status shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the established license renewal fee and the reinstatement fee; and

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation.

R156-1-308h. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308i. Relicensure Following Surrender of Licensure - Requirements.

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Section R156-1-308.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an

initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) pay the established license fee for a new applicant for licensure; and

(c) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered.

R156-1-404a. Diversion Advisory Committees Created - Impaneling of Committees - Appointment of Members - Terms of Office - Vacancies in Office - Removal of Members - Quorum Requirement - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) There is created diversion advisory committees of three members for each of the occupations or professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises.

(2) The term of office of each diversion committee member shall be for a period of three years; except that initial appointments to each diversion committee after adoption of these rules shall be staggered in that one appointment shall be one year, one appointment shall be for two years and one shall be for three years. Diversion committee members shall not be appointed to serve for more than two consecutive terms.

(3) No diversion committee member may serve more than two full terms, and no member who ceases to serve may again serve on the diversion committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a diversion committee occurs, the director shall appoint a replacement to fill the unexpired term in accordance with Section 58-1-404. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) The director may remove a member for reasonable cause with the concurrence of the executive director. Reasonable cause includes failing or refusing to fulfill the responsibilities and duties of an advisory committee member, including the attendance at diversion committee meetings. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) A chairman of each diversion committee shall be designated by the director from among the three members appointed to the diversion committee. That person shall be responsible for managing the work of the diversion committee in consultation with the director.

(7) Committees meetings shall only be convened following the referral of a licensee to the diversion committee.

(8) Unless otherwise approved by the division, diversion committee meetings shall be held in the building occupied by the division.

(9) A majority of the diversion committee members shall constitute a quorum and may act in behalf of the diversion committee.

(10) Diversion committees shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings, if any.

(11) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

(1) reviewing the details of the charges against licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;

(2) recommending to the director terms and conditions to be included in diversion agreements;

(3) supervising compliance with all terms and conditions of diversion agreements;

(4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

R156-1-404c. Diversion - Eligible Offenses.

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

R156-1-404d. Diversion - Procedures.

(1) Diversion committees shall complete the duties described in Subsections R156-1-404b(1) and (2) no later than 60 days following the referral of a licensee to the diversion committee for possible diversion.

(2) The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404(6) through (7).

(4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(5) The legal consequences of diversion are as described in Subsections 58-1-404(8) through (10).

(6) Reporting or release of information shall be in compliance with Subsection 58-1-404(9).

(7) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement and at any hearing before the director relating to a diversion program.

R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.

(1) The division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

(2) The division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the division shall enter agreements under this section, the division shall ensure the parties are competent to provide the required services. The division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

R156-1-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership; or

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation.

R156-1-503. Reporting Disciplinary Action.

The division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

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R156. Commerce, Occupational and Professional Licensing.
R156-11a. Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rules.
R156-11a-101. Title.

These rules are known as the "Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rules."

R156-11a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 11a, as used in Title 58, Chapters 1 and 11a or these rules:

(1) "Advanced pedicures", as used in Subsection 58-11a-102(27)(a)(i)(D), means cleaning, trimming and caring of the nail, cuticles, and calluses of the feet utilizing various equipment, instruments, implements as well as topical products and preparations.

(2) "BCA acid" means bicloroacetic acid.

(3) "Being engaged in the practice of esthetics", as used in Subsections 58-11a-302(7)(d)(iii) and (iv), means having been engaged in a scope of practice that includes at least 50% of the modalities listed in Subsection 58-11-102(25).

(4) "Being engaged in the practice of master esthetics", as used in Subsections 58-11a-302(8)(d)(iii) and (v), means having been engaged in a scope of practice that includes at least 50% of the modalities listed in Subsection 58-11a-102(27).

(5) "Body wraps", as used in Subsection 58-11a-102(27)(a)(i)(A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and promote the health of the skin and body.

(6) "Chemical exfoliation", as used in Subsection 58-11a-102(27)(a)(i)(C), means a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum.

(7) "Dermabrasion or open dermabrasion" means the surgical application of a wire or diamond frieze by a physician to abrade the skin to the epidermis and possibly down to the papillary dermis.

(8) "Dermaplane" means the use of a scalpel or bladed instrument by a physician to shave the upper layers of the stratum corneum.

(9) "Equivalent number of credit hours" means:

(a) the following conversion table if on a semester basis:

(i) theory - 1 credit hour - 30 clock hours;

(ii) practice - 1 credit hour - 30 clock hours; and

(iii) clinical experience - 1 credit hour - 45 clock hours; and

(b) the following conversion table if on a quarter basis:

(i) theory - 1 credit hour - 20 clock hours;

(ii) practice - 1 credit hour - 20 clock hours; and

(iii) clinical experience - 1 credit hour - 30 clock hours.

(10) "Exfoliation" means the sloughing off of non-living skin cells by very superficial and non-invasive means.

(11) "Galvanic current" means a constant low-voltage direct current.

(12) "Health care practitioner" means a physician/surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or a physician assistant licensed under Title 58, Chapter 70, Physician Assistant Act.

(13) "Hydrotherapy", as used in Subsection 58-11a-102(27)(a)(i)(B), means the use of water for cosmetic purposes or beautification of the body.

(14) "Limited chemical exfoliation" means an extremely gentle chemical exfoliation.

(15) "Manipulating", as used in Subsection 58-11a-102(25)(a), means applying a light pressure by the hands to the skin.

(16) "Manual lymphatic massage", as used in Subsection 58-11a-102(25)(b), means a method using light pressure applied by manual or other means to the skin in specific maneuvers to promote drainage of the lymphatic fluid through the tissue.

(17) "Microdermabrasion", as used in Subsection 58-11a-102(27)(a)(i)(E), means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(18) "Patch test" or "predisposition test" means applying a small amount of a chemical preparation to the skin of the arm or behind the ear to determine possible allergies of the client to the chemical preparation.

(19) "Supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter in the treatment of a patient of the health care practitioner while:

(a) the health care practitioner is physically located on the premises and is immediately available to care for the patient if complications arise; or

(b) the patient is physically located on the premises of the health care practitioner.

(20) "TCA acid" means trichloroacetic acid.

(21) "Unprofessional conduct" is further defined, in accordance with Subsection 58-1-203(5), in Section R156-11a-501.

R156-11a-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 11a.

R156-11a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-11a-301. Change of Legal Entity.

In accordance with Section 58-11a-301, a school shall be required to submit a new application for licensure upon any change of legal entity status. The new legal entity may not engage in practice as a licensed school, pursuant to Subsections 58-11a-102(14), (15), (16), and (17), until the application is approved and a license issued.

R156-11a-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-11a-302, the various examination requirements for licensure are established as follows:

(1) Applicants for licensure as a cosmetologist/barber shall:

(a) pass the Utah Law and Rules Examination with a score of at least 75%;

(b)(i) pass the Utah Cosmetology/Barber Theory Exam with a score of at least 75%; or

(ii) pass the National-Interstate Council of State Boards of Cosmetology National examination with a passing score as established by the Council of State Boards of Cosmetology; and

(c)(i) pass the Utah Cosmetology/Barber Practical Exam or an equivalent exam as established by the Division in collaboration with the Board; or

(ii) have practiced as a licensed cosmetologist/barber in another state for a period of not less than 4,000 hours.

(2) Applicants for licensure as a cosmetologist/barber instructor shall pass the following:

(a) the Utah Cosmetologist/Barber Instructor Licensing Examination with a passing score of at least 75%; and

(b) the Utah Law and Rules Examination with a passing score of at least 75%.

(3) Applicants for licensure as an electrologist shall pass the following:

(a)(i) the National-Interstate Council of State Boards of Cosmetology Electrologist test with a passing score as established by the Council of State Boards of Cosmetology; or

(ii) the Utah Electrologist Theory Examination;

(b) the Utah Law and Rules Examination with a passing score of at least 75%; and

(c) the Utah Electrology Practical Examination.

(4) Applicants for licensure as an electrologist instructor shall pass the following:

(a) the Utah Electrologist Instructor Examination with a passing score of at least 75%; and

(b) the Utah Law and Rules Examination with a passing score of at least 75%.

(5) Applicants for licensure as an esthetician shall pass the following:

(a) if applying for licensure under Subsections 58-11a-302(7)(d)(i) or (ii):

(i) the Utah Law and Rules Examination with a passing score of at least 75%;

(ii) (A) the Utah Esthetics Theory Examination with a passing score of at least 75%; or

(B) the National-Interstate Council of State Board of Cosmetology National Esthetics examination with a passing score as established by the Council of State Boards of Cosmetology; and

(iii) the Utah Esthetics Practical Examination or an equivalent exam as established by the Division in collaboration with the Board;

(b) if applying for licensure under Subsections 58-11a-302(7)(d)(iii) or (iv), no examination is required; or

(c) if applying for licensure under Subsection 58-11a-302(7)(d)(v):

(i) the Utah Esthetics Theory Examination with a passing score of at least 75%; or

(ii) the National-Interstate Council of State Boards of Cosmetology National Esthetics examination with a passing score as established by the Council of State Boards of Cosmetology.

(6) Applicants for licensure as a master esthetician shall pass the following:

(a) if applying for licensure under Subsections 58-11a-302(8)(d)(i) or (ii):

(i) the Utah Law and Rules Examination with a passing score of at least 75%;

(ii) the Utah Master Esthetician Theory Examination with a passing score of at least 75%; and

(iii) the Utah Master Esthetician Practical Examination or an equivalent exam as established by the Division in collaboration with the Board;

(b) if applying for licensure under Subsections 58-11a-302(8)(d)(iii) or (iv), no examination is required; or

(c) if applying for licensure under Subsection 58-11a-302(8)(d)(v), the Utah Master Esthetician Theory Examination.

(7) Applicants for licensure as an esthetician instructor shall pass the following:

(a) the Utah Esthetician Instructor Examination with a passing score of at least 75%; and

(b) the Utah Law and Rules Examination with a passing score of at least 75%.

(8) Applicants for licensure as a Nail Technician shall pass the following:

(a) if applying for licensure under Subsections 58-11a-302(11)(d)(i) or (ii):

(i) the Utah Law and Rules Examination with a passing score of at least 75%;

(ii)(A) the Utah Nail Technician Theory Examination with a passing score of at least 75%; or

(B) the National-Interstate Council of State Boards of Cosmetology National Nail Technician Examination with a passing score as established by the Council of State Boards of Cosmetology; and

(iii) pass the Utah Nail Technician Practical Examination or an equivalent exam as established by the Division in collaboration with the Board;

(b) if applying for licensure under Subsections 58-11a-302(11)(d)(iii) or (iv), no examination is required; or

(c) if applying for licensure under Subsection 58-11a-302(11)(d)(v):

(i) the Utah Nail Technician Theory Examination with a passing score of at least 75%; or

(ii) the National-Interstate Council of State Boards of Cosmetology National Nail Technician Examination with a passing score as established by the Council of State Boards of Cosmetology.

(9) Applicants for licensure as a nail technician instructor shall pass the following:

(a) the Utah Nail Technician Instructor Examination with a passing score of at least 75%; and

(b) the Utah Law and Rules Examination with a passing score of at least 75%.

R156-11a-302b. Deadline for Making Application under Grandfather Clause.

Applicants for licensure under the grandfather provisions in Subsections 58-11a-302(7)(d)(iii), (iv), and (v); (8)(d)(iii), (iv), and (v); and (11)(d)(iii), (iv), and (v) must apply for

licensure on or before December 31, 2001. Thereafter, all applicants must meet all requirements for initial licensure including those established in Subsections 58-11a-302(7)(d)(i) and (ii), 58-11a-302(8)(d)(i) and (ii) or 58-11a-302(11)(d)(i) and (ii), respectively.

R156-11a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licenses and certificates under Title 58, Chapter 11a is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-11a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to provide direct supervision of an apprentice, a student attending a cosmetology/barber, esthetics, electrology, or nail technology school, or a student instructor;

(2) failing to obtain accreditation as a cosmetology/barber, esthetics, electrology, or nail technology school in accordance with the requirements of Section R156-11a-601;

(3) failing to maintain accreditation as a cosmetology/barber, esthetics, electrology or nail technology school after having been approved for accreditation;

(4) failing to comply with the standards of accreditation applicable to cosmetology/barber, esthetics, electrology, or nail technology schools;

(5) failing to provide adequate instruction or training as applicable to a student of a cosmetology/barber, esthetics, electrology, or nail technology school or in an approved cosmetology/barber, esthetics, or nail technology apprenticeship;

(6) failing to comply with Title 26, Utah Health Code;

(7) failing to comply with the apprenticeship requirements applicable to cosmetologist/barber, esthetician, master esthetician, or nail technician apprenticeships as set forth in Sections R156-11a-801 through R156-11a-805;

(8) failing to comply with the standards for curriculums applicable to cosmetology/barber, esthetics, electrology, or nail technology schools as set forth in Sections R156-11a-701 through R156-11a-704;

(9) using any device classified by the Food and Drug Administration as a medical device without the supervision of a licensed health care practitioner acting in the scope of the licensee's practice;

(10) performing services within the scope of practice as a master esthetician without having been adequately trained to perform such services;

(11) violating any standard established in Sections R156-11a-601 through R156-11a-612;

(12) as a nail technician, using methyl methacrylate;

(13) performing a procedure while the licensee has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease; and

(14) performing a procedure on a client who has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease.

R156-11a-601. Standards for Accreditation.

In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv) 58-11a-302(10(c)(iv), and 58-11a-302(13)(c)(iv), the accreditation standards for a cosmetology/barber school, an electrology school, an esthetics school, and a nail technology school include:

(1) Each school shall be required to become accredited by:

(a) the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS); or

(b) other accrediting commissions recognized by the Utah Board of Regents for post secondary schools.

(2) Each school shall maintain and keep the accreditation current.

(3) A new school shall:

(a) submit an application for candidate status for accreditation to an accrediting commission within one month of receiving licensure from the Division as a cosmetology/barber school, an electrology school, an esthetics school, or a nail technology school and shall provide evidence of receiving candidate status from the accrediting commission to the Division within 12 months of the date the school was licensed;

(b) register with the Utah Board of Regents pursuant to Subsection 53B-5-105(1)(e); and

(c) comply with all applicable accreditation standards during the pendency of its application for accreditation status.

(4) The school shall have 24 months following the date of receiving candidate status to be approved for accreditation.

(5) A licensee who fails to obtain or maintain accreditation status, as required herein, shall immediately surrender to the Division its license as a school. Failure to do so shall constitute a basis for immediate revocation of licensure in accordance with Section 63-46b-20.

R156-11a-602. Standards for the Physical Facility.

In accordance with Subsections 58-11a-302(3)(c)(iii), 58-11a-302(6)(c)(iii), 58-11a-302(10)(c)(iii) and 58-11a-302(13)(c)(iii), the standards for the physical facility of a cosmetology/barber school, an electrology school, an esthetics school, and a nail technology school shall include:

(1) the governing standards established by the accreditation commission; and

(2) whether or not addressed in the governing standards, each facility shall have the following available:

(a) enough of each type of training equipment so that each student has an equal opportunity to be properly trained;

(b) laundry facilities to maintain sanitation and sterilization; and

(c) appropriate amounts of clean towels, sheets, linen, sponges, headbands, compresses, robes, drapes and other necessary linens for each student's and client's use.

R156-11a-603. Standards for a Student Kit.

(1) In accordance with Subsection 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(10(c)(iv), and 58-11a-302(13)(c)(iv), cosmetology/barber, electrology, esthetics, and nail technology schools shall provide a list of all basic kit supplies needed by each student.

(2) The basic kit may be supplied by the school or purchased independently by the student.

R156-11a-604. Standards for Prohibition Against Operation as a Salon.

(1) In accordance with Subsection 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11-302(10)(c)(iv), and 58-11a-302(13)(c)(iv), when a professional salon and a school are under the same ownership or otherwise associated, separate operation of the salon and the school is required.

(2) If the salon and the school are located in the same building, separate entrances and visitor reception areas are required. The salon and the school shall also use separate public information releases, advertisements and names.

R156-11a-605. Standards for Protection of Students.

In accordance with Subsections 58-11a-302(3)(c)(iii) and (iv), 58-11a-302(6)(c)(iii) and (iv), 58-11a-302(10)(c)(iii) and (iv), 58-11a-302(13)(c)(iii) and (iv), standards for the protection of students shall include the following:

(1) In the event a school ceases to operate for any reason, the school shall notify the division within 15 days by registered or certified mail and shall name a trustee who will be responsible to maintain the student records. Upon request, the trustee shall provide information such as accumulated student hours and dates of attendance.

(2) Schools shall not use students to perform maintenance, janitorial or remodeling work such as scrubbing floor, walls or toilets, cleaning windows, waxing floors, painting, decorating, or performing any outside work on the grounds or building. Students may be required to clean up after themselves and to perform or participate in daily cleanup of work areas, including the floor space, shampoo bowls, laundering of towels and linen and other general cleanup duties that are related to the performance of client services.

(3) Schools shall not require students to sell products applicable to their industry as a condition to graduate, but may provide instruction in product sales techniques as part of their curriculums.

(4) Schools shall keep a daily written record of student attendance.

(5) Schools shall not be permitted to remove hours earned by a student. If a student is late for class, the school may require the student to retake the class before giving credit for the class.

R156-11a-606. Standards for Protection of Schools.

In accordance with Subsection 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(10)(c)(iv), and 58-11a-302(13)(c)(iv), standards for the protection of cosmetology/barber, electrology, esthetics, and nail technology schools shall include:

(1) Schools shall not be required to release documentation of hours earned to a student until the student has paid the tuition or fees owed to the school as provided in the terms of the contract.

(2) Schools may accept transfer students. Schools shall determine the amount of hours to be accepted toward graduation based upon an evaluation of the student's level of training.

R156-11a-607. Standards for a Written Contract.

(1) In accordance with Subsection 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(10)(c)(iv), and 58-11a-302(13)(c)(iv), cosmetology/barber, electrology, esthetics, and nail technology schools shall complete a written contract with each student prior to admission.

(2) Each contract shall contain, as a minimum:

(a) the current status of the school's accreditation;

(b) rules of conduct;

(c) attendance requirements;

(d) provisions for make up work;

(e) grounds for probation, suspension or dismissal; and

(f) a detailed fee schedule which shall include the student's financial responsibility upon voluntarily leaving the school or upon being suspended from the school.

(3) The school shall maintain on file a copy of the contract for each student and shall provide a copy of the contract to the division upon request.

R156-11a-608. Standards for Staff Requirements of Schools.

In accordance with Subsection 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv, 58-11a-302(10)(c)(iv), and 58-11a-302(13)(c)(iv), the staff requirement for cosmetology/barber, electrology, esthetics and nail technology school shall include:

(1) Schools shall be required to have, as a minimum, one licensed instructor for every 20 students, or fraction thereof, attending a practical session, and one licensed instructor for any group attending a theory session. Special guest speakers shall not reduce the number of licensed instructors required to be present.

(2) Schools may give credit for special workshops, training seminars, and competitions, or may invite special guest speakers who are not licensed in accordance with Section 58-11a-302, to provide instruction or give practical demonstrations to supplement the curriculum as long as a licensed instructor from the school is present.

(3) Student instructors shall not be counted as part of the instructor staff.

R156-11a-609. Standards for Instructors.

(1) In accordance with Subsections 58-11a-302(2)(c)(iv), 58-11a-302(5)(c)(iv), 58-11a-302(9)(c)(iv), and 58-11a-302(12)(c)(iv), cosmetology/barber, electrology, esthetics, and nail technology instructors may only teach in those areas for which they have received training and are qualified to teach.

(2) In accordance with Subsection 58-11a-102(21)(b), an individual licensed as a cosmetology/barbering instructor may teach esthetics in a licensed cosmetology/barber school or an approved cosmetology/barber apprenticeship, provided the individual can demonstrate the same experience as required in Subsection 58-11a-302(9)(e).

(3) An instructor may only teach the use of a mechanical or electrical apparatus for which the instructor is trained and qualified.

R156-11a-610 Standards for the Use of Acids.

In accordance with Subsections 58-11a-102(25)(c), 58-11a-102(27)(i)(C) and 58-11a-501(17), the standards for the use of any acid or concentration of acids, shall be:

(1) The use of any acid or acid solution which would exfoliate the skin below the stratum corneum, including those listed in Subsections (3) and (4), is prohibited unless used under the supervision of a licensed health care practitioner.

(2) The following acids are prohibited unless used under the supervision of a licensed health care practitioner:

(a) phenol;

(b) trichloroacetic acid;

(c) bichloroacetic acid;

(d) resorcinol, except as provided in Subsection (4)(b); and

(e) any acid in any concentration level that requires a prescription.

(3) Limited chemical exfoliation for an esthetician does not include the mixing and combining of skin exfoliation products or services, but does include:

(a) alpha hydroxy acids of 30% or less, with a pH of not less than 3.0; and

(b) salicylic acid of 20% with a pH of not less than 3.0.

(4) Chemical exfoliation for a master esthetician includes using:

(a) those acids allowed for an esthetician;

(b) modified jessner solution on the face and the tissue immediately adjacent to the jaw line;

(c) alpha hydroxy acids with a pH of not less than 1.0 and at a concentration of 50% must include partially neutralized acids, and any acid above the concentration of 50% is prohibited;

(d) beta hydroxy acids with a concentration of not more that 30%;

(e) azelaic acid;

(f) kojic acid;

(g) amino acids at a concentration of not more than 30%; and

(h) vitamin based acids.

(5) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion within the previous seven days.

(6)(a) A licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

(i) courses of instruction;

(ii) specialized training;

(iii) on-the-job experience; and

(iv) the approximate percentage that chemical exfoliation represents in the licensee's overall business.

(b) A licensee shall provide the documentation required by Subsection (6)(a) to the division upon request.

(7) A licensee may not use an acid or perform a chemical exfoliation for which the licensee is not competent to use or perform through training and experience and as documented in accordance with Subsection (6).

(8) Only commercially available products utilized in accordance with manufacturers' instructions may be used for chemical exfoliation purposes.

(9) A patch test shall be administered to each client prior to beginning any chemical exfoliation series.

R156-11a-611. Standards for Approval of Mechanical or Electrical Apparatus.

In accordance with Subsection 58-11a-102(27)(a)(i)(F)(II), the standards for approval of mechanical or electrical apparatus shall be:

(1) No mechanical or electrical apparatus that is considered a prescription medical device by the FDA may be used by a licensee, unless such use is completed under the supervision of a licensed health care practitioner acting within the scope of the licensee's license.

(2) Dermaplane procedures, dermabrasion procedures, blades, knives, lancets, and any tools that invade the skin or living cells are prohibited except for:

(a) advanced pedicures; and

(b) extraction of impurities from the skin.

(3) The use of any procedure in which human tissue is cut or altered by mechanical or energy form, including electrical or laser energy or ionizing radiation, is prohibited for all individuals licensed under this chapter unless under the supervision of a licensed health care practitioner acting within the scope of the licensee's license.

(4) To be approved, a microdermabrasion machine must meet the following criteria:

(a) specifically labeled for cosmetic or esthetic purposes;

(b) closed-loop vacuum system that uses a tissue retention device; and

(c) the normal and customary use of the machine does not result in the removal of the epidermis beyond the stratum corneum.

R156-11a-612. Standards for Disclosure.

(1) In accordance with Subsections 58-11a-102(25)(c) and (27)(i)(C), a licensee acting within the licensee's scope of practice shall inform a client of the following before applying a chemical exfoliant or using a microdermabrasion machine:

(a) that the procedure may only be performed for cosmetic and not medical purposes, unless the licensee is working under the supervision of a licensed health care practitioner, who is working within the scope of the practitioner's license; and

(b) the benefits and risks of the procedure.

R156-11a-701. Curriculum for Electrology Schools.

In accordance with Subsection 58-11a-302(6)(c)(iv), the curriculum for an electrology school shall consist of 500 hours of instruction in the following subject areas:

(1) Introduction as follows:

(a) history of electrology; and

(b) overview of curriculum.

(2) Basic Science and Anatomy as follows:

(a) medical definitions and diagnosis;

(b) prescription drugs affecting hair growth; and

(e) contraindications.

(3) Histology;

(4) Trichology;

(5) Endocrinology;

(6) Dermatology;

(7) Neurology as follows:

(a) anesthetics, including over-the-counter and prescription; and

(c) carpal tunnel syndrome.

(8) Angiology

(9) Psychology as follows:
(a) aesthetic/cosmetic electrolysis; and
(b) gender dysphoric clients.
(10) Practical Analysis as follows:
(a) evaluating the characteristics of skin;
(b) evaluating the characteristics of hair growth;
(c) needle/probe types, features and selection;
(d) insertions, considerations and accuracy; and
(e) one and two handed techniques.
(11) Infection and Disease Control as follows:
(a) pathogenic bacteria and non bacterial causes;
(b) American Electrology Association (AEA) infection control standards;
(c) aseptic techniques and sanitary procedures;
(d) sterilization methods and procedures; and
(e) health risks to the electrologist.
(12) Principles of Electricity and Equipment as follows:
(a) currents, measurement and classification;
(b) FDA Class 1 needle type epilating equipment;
(c) FDA Class 3 hair removal devices; and
(d) laser technologies for temporary hair removal prohibited unless performed under the supervision of a licensed health care profession; and
(e) epilator operation and care.
(13) Modalities for Needle Type Electrolysis as follows:
(a) galvanic multi needle technique;
(b) thermolysis manual technique;
(c) thermolysis flash technique; and
(d) blend and progressive epilation technique.
(14) Clinical Procedures as follows:
(a) consultation;
(b) health/medical history;
(c) pre and post treatment skin care;
(d) normal healing skin effects;
(e) tissue injury and complications;
(f) treating ingrown hairs;
(g) face and body treatment;
(h) evaluation of treatments/regrowth;
(i) positioning and draping; and
(j) stress and relaxation techniques.
(15) Developing a practice and business management as follows:
(a) professional associations;
(b) ethics;
(c) legal issues including:
(i) malpractice liability;
(ii) regulatory agencies; and
(iii) tax laws;
(d) public relations; and
(e) advertising.
(16) State Board Exams Review; and
(17) Elective Topics.

R156-11a-702. Curriculum for Esthetics School - Esthetician Programs.

In accordance with Subsection 58-11a-302(10)(c)(iv), the curriculum for an esthetics school esthetician program shall consist of 600 hours of instruction in the following subject areas:

(1) manual lymphatic massage of the face and neck;
(2) temporary removal of superfluous hair;
(3) treatment of the skin;
(4) packs and masks;
(5) analysis of the skin;
(6) application of make-up;
(7) application of false eyelashes;
(8) arching of the eyebrows;
(9) tinting of the eyelashes and eyebrows;
(10) history and theory of skin care;
(11) electronic facials;
(12) first aid;
(13) chemistry of cosmetics;
(14) skin treatments with and without machines;
(15) anatomy and physiology;
(16) sanitation, decontamination, and infection control;
(17) waxing;
(18) pedicures;
(19) aromatherapy;
(20) limited chemical exfoliation;
(21) other related topics; and
(22) state laws and rules.

R156-11a-703. Curriculum for Esthetics School – Master Esthetician Programs.

In accordance with Subsection 58-11a-302(10)(c)(iv), the curriculum for an esthetics school master esthetician program shall consist of 1,200 hours of instruction, 600 of which consisting of the curriculum for an esthetician program, the remaining 600 of which is in the following subject areas:

(1) introduction consisting of:
(a) history of master esthetics; and
(b) overview of curriculum;
(2) bacteriology, hygiene, sanitation, and sterilization techniques;
(3) the immune system, skin disorders, and the prevention of infectious disease;
(4) essentials of chemistry and advanced cosmetic chemistry;
(5) the skin and the aging process, including damage to the skin;
(6) lymphatic massage by manual and other means;
(7) advanced anatomy, physiology, and histology of the skin;
(8) body wrapping, including procedures, product ingredients, and contra-indications;
(9) advanced pedicures;
(10) hydrotherapy;
(11) advanced waxing and temporary hair removal;
(12) chemical exfoliation, including pre-exfoliation consultation, post-exfoliation treatments and reactions;
(13) cardio pulmonary resuscitation (CPR) training;
(14) advanced aromatherapy;
(15) sanding and microdermabrasion, including training in the use of:
(a) electrical devices which use high-frequency current in the treatment of the skin, including:
(i) a device equipped with a brush to cleanse the skin;
(ii) an electrical device which uses galvanic current for the

treatment of the skin;

(iii) a device which applies a mixture of steam and ozone to the skin; and

(iv) a device which is used to spray water and other liquids on the skin, and to stimulate circulation in the skin; and

(b) any mechanical device for the care and treatment of the skin which is approved by the division in collaboration with the board; and

(16) other esthetic preparations or procedures.

R156-11a-704. Curriculum for Nail Technology Schools.

In accordance with Subsection 58-11a-302(6)(c)(iv), the curriculum for a nail technology school shall consist of 200 hours of instruction in the following subject areas:

(1) safety and sanitation, including salon safety, bacteriology, and sterilization;

(2) artificial nail techniques, including wraps, tips, gel, sculptured acrylic nail, nail art, and mechanical techniques;

(3) cosmetic chemistry;

(4) pedicuring including massage of the lower leg and foot;

(5) anatomy and physiology;

(6) nail and the disorders of nail;

(7) skin and the disorders of the skin;

(8) first aid;

(9) theory of basic manicuring with hand and arm massage;

(10) professional ethics/salon management/state laws; and

(11) elective topics.

R156-11a-705. Curriculum for Cosmetology/Barber Schools.

In accordance with Subsection 58-11a-302(3)(c)(iv), the curriculum for a cosmetology/barber school shall consist of 2,000 hours of instruction, 600 of which consisting of the curriculum for an esthetics school esthetician program; 200 of which consisting of the curriculum for a nail technology school; and the remaining 1,200 of which in the following subject areas:

(1) introduction consisting of:

(a) history of cosmetology/barbering; and

(b) overview of curriculum;

(2) professional image, including professional ethics and salon management;

(3) bacteriology, sanitation and sterilization, safety, and diseases and disorders;

(4) decontamination, infection control, and salon safety;

(5) properties of the hair and scalp;

(6) draping;

(7) shampooing, rinsing, and conditioning;

(8) haircutting, including men and women;

(9) hairstyling, including wet and thermal;

(10) permanent waving;

(11) hair coloring;

(12) chemical hair relaxing;

(13) thermal hair straightening;

(14) wigs and artificial hair;

(15) first aid;

(16) anatomy and physiology;

(17) chemistry for cosmetology/barbering;

(18) professional ethics and salon management;

(19) electricity and light therapy;

(20) implements, tools, and equipment for cosmetology and barbering;

(21) shaving;

(22) clipper variations;

(23) razor cutting for men;

(24) mustache and beard design;

(25) licensing laws and rules; and

(26) elective topics.

R156-11a-801. Approved Cosmetologist/Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved cosmetology/barber apprenticeship shall include the following:

(1) The supervisor shall have only one apprentice at a time.

(2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(3) The supervisor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of cosmetology/barber texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The supervisor shall provide training and technical instruction of 2,500 hours using the curriculum defined in Section R156-11a-705.

(7) The supervisor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-705.

(9) Hours obtained while enrolled in a cosmetology/barber school shall not be used to satisfy the required 2,500 hours of apprentice training.

R156-11a-802. Approved Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(2), the requirements for an approved esthetician apprenticeship shall include:

(1) The supervisor shall have no more than two apprentices at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The supervisor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of esthetics texts shall be available to

the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The supervisor shall provide training and technical instruction of 800 hours using the curriculum defined in Section R156-11a-702.

(7) The supervisor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours required in technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-702.

(9) Hours obtained while enrolled in an esthetics school shall not be used to satisfy the required 800 hours of apprentice training.

R156-11a-803. Approved Master Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(3), the requirements for an approved master esthetician apprenticeship shall include:

(1) The supervisor shall have no more than two apprentices at a time.

(2) The apprentice shall be licensed as an esthetician.

(3) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(4) The supervisor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(5) A complete set of esthetics texts shall be available to the apprentice.

(6) An apprentice may be compensated for services performed.

(7) The supervisor shall provide training and technical instruction of 1,500 hours using the curriculum defined in Section R156-11a-703:

(8) The supervisor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(9) An apprentice may not perform work on the public until the apprentice has received at least 10% of the required hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-703.

(10) Hours obtained while enrolled in an esthetics school shall not be used to satisfy the required 1,500 hours of apprentice training.

R156-11a-804. Approved Nail Technician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(4), the requirements for an approved nail technician apprenticeship shall include:

(1) The supervisor shall have no more than two apprentices at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The supervisor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of nail technician texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The supervisor shall provide training and technical instruction of 250 hours using the curriculum defined in Section R156-11a-704.

(7) The supervisor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-704.

(9) Hours obtained while enrolled in a nail technology school shall not be used to satisfy the required 250 hours of apprentice training.

R156-11a-805. Conflicts of Interest.

An apprentice instructor may not be an employee of an apprentice or be involved in any relationship with an apprentice or others that would interfere with the instructor's ability to teach and train the apprentice.

R156-11a-901. On the Job Training Internship.

In accordance with Subsection 58-11a-304(8), students enrolled in a licensed cosmetology/barber school may participate in an on the job training internship if they meet the following requirements:

(1) The on the job training intern must have completed at least 1000 hours of the training contracted for with a cosmetology/barber school, of which 400 hours shall be clinical hours.

(2) There shall be a conspicuous sign near the work station of the on the job training intern stating "Intern in Training".

(3) A licensed cosmetology/barber supervisor shall supervise only one on the job training intern at a time.

(4) An on the job training intern, while working under the direct supervision of a licensed cosmetologist/barber, may perform the following procedures:

(a) draping;
(b) shampooing;
(c) roller setting;
(d) blow drying styling;
(e) applying color;
(f) removing color by rinsing and shampooing;
(g) removing permanent chemicals;
(h) removing permanent rods;
(i) removing rollers;
(j) applying temporary rinses, reconditioners, and

rebuilders;

(k) acting as receptionists;

(l) doing retail sales;

(m) sanitizing the salon;

(o) doing inventory and ordering supplies; and

(p) handing equipment to the cosmetologist/barber supervisor.

(5) The cosmetologist/barber supervisor must have in their possession a letter, which must be updated on a quarterly basis, from the school where the on the job training intern is enrolled stating that the on the job training intern is currently in good standing at the school and is complying with school requirements.

(6) Credit toward graduation for work as an on the job training intern will not be allowed.

KEY: cosmetologists/barbers*, estheticians*, electrologists*, nail technicians*

September 17, 2001 **58-11a-101**
58-1-106(1)
58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-31b. Nurse Practice Act Rules.
R156-31b-101. Title.

These rules are known as the "Nurse Practice Act Rules".

R156-31b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in these rules:

(1) "APRN" means an advanced practice registered nurse.

(2) "Approved continuing education" in Subsection R156-31b-303(3) means:

(a) continuing education that has been approved by a professional nationally recognized approver of health related continuing education;

(b) nursing education courses taken from an approved education program as defined in Section R156-31b-601; and

(c) health related course work taken from an educational institution accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", 1997-98 edition, published for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education.

(3) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program published in the documents entitled "State-Approved Schools of Nursing RN", 1998, and "State-Approved Schools of Nursing LPN/LVN", 1998, published by the National League for Nursing Accrediting Commission, which are hereby adopted and incorporated by reference as a part of these rules.

(4) "CCNE" means the Commission on Collegiate Nursing Education.

(5) "Contact hour" means 50 minutes.

(6) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(7) "CRNA" means a certified registered nurse anesthetist.

(8) "Delegation" means transferring to an individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation.

(9) "Direct supervision" is the supervision required in Subsection 58-31b-306(1)(a)(iii) and means:

(a) the person providing supervision shall be available on the premises at which the supervisee is engaged in practice; or

(b) if the supervisee is specializing in psychiatric mental health nursing, the supervisor may be remote from the supervisee if there is personal direct voice communication between the two prior to administering or prescribing a prescription drug.

(10) "Disruptive behavior", as used in these rules, means conduct, whether verbal or physical, that is demeaning, outrageous, or malicious and that places at risk patient care or the process of delivering quality patient care. Disruptive behavior does not include criticism that is offered in good faith with the aim of improving patient care.

(11) "Generally recognized scope and standards of advanced practice registered nursing" means the scope and standards of practice set forth in the "Scope and Standards of Advanced Practice Registered Nursing", 1996, published by the American Nurses Association, which is hereby adopted and incorporated by reference, or as established by the professional community.

(12) "Generally recognized scope of practice of licensed practical nurses" means the scope of practice set forth in the "Model Nursing Administrative Rules", 1994, published by the National Council of State Boards of Nursing, which is hereby adopted and incorporated by reference, or as established by the professional community.

(13) "Generally recognized scope of practice of registered nurses" means the scope of practice set forth in the "Standards of Clinical Nursing Practice", 2nd edition, 1998, published by the American Nurses Association, which is hereby adopted and incorporated by reference, or as established by the professional community.

(14) "Licensure by equivalency" as used in these rules means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Section R156-31b-601.

(15) "LPN" means a licensed practical nurse.

(16) "NLNAC" means the National League for Nursing Accrediting Commission.

(17) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(18) "Non-approved education program" means any foreign nurse education program.

(19) "Other specified health care professionals", as used in Subsection 58-31b-102(12), who may direct the licensed practical nurse means:

(a) advanced practice registered nurse;

(b) certified nurse midwife;

(c) chiropractic physician;

(d) dentist;

(e) osteopathic physician;

(f) physician assistant;

(g) podiatric physician; and

(h) optometrist.

(20) "Patient surrogate", as used in Subsection R156-31b-502(4), means an individual who has legal authority to act on behalf of the patient when the patient is unable to act or decide for himself, including a parent, foster parent, legal guardian, or a person designated in a power of attorney.

(21) "RN" means a registered nurse.

(22) "Supervision" in Section R156-31b-701 means the provision of guidance or direction, evaluation and follow up by the licensed nurse for accomplishment of a task delegated to unlicensed assistive personnel or other licensed individuals.

(23) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 31b.

R156-31b-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-31b-201. Board of Nursing - Membership.

In accordance with Subsection 58-31b-201(3), the Board of Nursing shall be composed of the following nurse members:

(1) four registered nurses, two of whom are actively involved in nursing education;

(2) one licensed practical nurse; and

(3) two advanced practice registered nurses or certified registered nurse anesthetists.

R156-31b-203. Prescriptive Practice Peer Committee Audits.

In accordance with Subsection 58-31b-202(1)(b)(ii), the Prescriptive Practice Peer Committee shall audit and review the prescribing records of APRNs by reviewing the controlled substance data bank. The prescribing records of five percent of APRNs with a controlled substance license will be reviewed on a quarterly basis.

R156-31b-301. License Classifications - Professional Upgrade.

Upon issuance and receipt of an increased scope of practice license, the increased licensure supersedes the lesser license which shall automatically expire and must be immediately destroyed by the licensee.

R156-31b-302a. Qualifications for Licensure - Education Requirements.

In accordance with Sections 58-31b-302 and 58-31b-303, the education requirements for licensure are defined as follows:

(1) Applicants for licensure by equivalency shall submit written verification from an approved registered nurse education program, verifying the applicant is currently enrolled and has completed course work which is equivalent to the course work of an NLNAC accredited practical nurse program.

(2) Applicants from foreign education programs shall submit a credentials evaluation report from one of the following credentialing services which verifies that the program completed by the applicant is equivalent to an approved practical nurse or registered nurse education program.

(a) Commission on Graduates of Foreign Nursing Schools;

(b) Foundation for International Services, Inc; or

(c) International Consultants of Delaware, Inc.

R156-31b-302b. Qualifications for Licensure - Experience Requirements for APRNs Specializing as Psychiatric Mental Health Nurse Specialists.

In accordance with Subsection 58-31b-302(3)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall:

(1) be a minimum of 4,000 hours, including 1,000 hours of mental health therapy and one hour of face to face supervision for every 20 hours of mental health therapy services provided;

(a) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing. The remaining 3,000 hours shall:

(i) be completed while an employee, unless otherwise approved by the board and division, under the supervision of an approved supervisor; and

(ii) be completed under a program of supervision by a supervisor who meets the requirements under Subsection (3). At least 2,000 hours must be under the supervision of an APRN specializing as a psychiatric mental health nurse specialist.

(2) An applicant who has obtained all or part of the clinical practice hours outside of the state, may receive credit for that experience if it is demonstrated by the applicant that the training completed is equivalent to and in all respects meets the requirements under this section.

(3) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(4) Duties and responsibilities of a supervisor include:

(a) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(b) supervising not more than three supervisees unless otherwise approved by the division in collaboration with the board; and

(c) submitting appropriate documentation to the division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(5) An applicant for licensure by endorsement as an APRN specializing as a psychiatric mental health nurse specialist under the provisions of Section 58-1-302 shall demonstrate compliance with the clinical practice in psychiatric and mental health nursing requirement under Subsection 58-31b-302(3)(g) by demonstrating that the applicant has successfully engaged in active practice as a psychiatric mental health nurse specialist for not less than 4,000 hours in the three years immediately preceding the application for licensure.

R156-31b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Section 58-31b-302, the examination requirements for graduates of approved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.

(b) An applicant for licensure as an APRN shall pass one of the following national certification examinations consistent with his educational specialty:

(i) one of the following examinations administered by the American Nurses Credentialing Center Certification:

(A) Adult Nurse Practitioner;

(B) Family Nurse Practitioner;

(C) School Nurse Practitioner;

(D) Pediatric Nurse Practitioner;

(E) Gerontological Nurse Practitioner;

(F) Acute Care Nurse Practitioner;

(G) Clinical Specialist in Medical-Surgical Nursing;

(H) Clinical Specialist in Gerontological Nursing;

(I) Clinical Specialist in Community Health Nursing;

(J) Clinical Specialist in Adult Psychiatric and Mental Health Nursing;

(K) Clinical Specialist in Child and Adolescent Psychiatric and Mental Health Nursing;

(ii) National Certification Board of Pediatric Nurse

Practitioners and Nurses;

(iii) American Academy of Nurse Practitioners;

(iv) The National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;

(v) The Oncology Nursing Certification Corporation; or

(vi) The Advanced Practice Certification for the Clinical Nurse Specialist in Acute and Critical Care.

(c) An applicant for licensure as a CRNA shall pass the examination of the Council on Certification of the American Association of Nurse Anesthetists.

(2) In accordance with Section 58-31b-303, an applicant for licensure as an LPN or RN from a non-approved nursing program shall pass the applicable NCLEX examination.

R156-31b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

(3) Each applicant for renewal shall comply with the following continuing competence requirements:

(a) An LPN or RN shall complete one of the following during the two years immediately preceding the application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall complete the following:

(i) be currently certified or recertified in their specialty area of practice; or

(ii) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice.

(c) A CRNA shall be currently certified or recertified as a CRNA.

R156-31b-306. Inactive Licensure.

(1) A licensee may apply for inactive licensure status in accordance with Sections 58-1-305 and R156-1-305.

(2) To reactivate a license which has been inactive for five years or less, the licensee must document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(3) To reactivate a license which has been inactive for more than five years, the licensee must document active licensure in another state or jurisdiction or pass the required examinations as defined in Section R156-31b-302c within six months prior to making application to reactivate a license.

R156-31b-307. Reinstatement of Licensure.

(1) In accordance with Section 58-1-308 and Subsection R156-1-308e(3)(b), an applicant for reinstatement of a license which has been expired for five years or less, shall document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(2) The Division may waive the reinstatement fee for an individual who was licensed in Utah and moved to a Nurse Licensure Compact party state, who later returns to reside in Utah.

R156-31b-309. Intern Licensure.

(1) In accordance with Section 58-31b-306, an intern license shall expire:

(a) immediately upon failing to take the first available examination;

(b) 30 days after notification, if the applicant fails the first available examination; or

(c) upon issuance of an APRN license.

(2) Regardless of the provisions of Subsection (1) of this section, the division in collaboration with the board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

R156-31b-310. Licensure by Endorsement.

(1) In accordance with Section 58-1-302, an individual who moves from a Nurse Licensure Compact party state does not need to hold a current license, but the former home state license must have been in good standing at the time of expiration.

(2) An individual under Subsection (1) who has not been licensed or practicing nursing for three years or more is required to retake the licensure examination to demonstrate good standing within the profession.

R156-31b-401. Disciplinary Proceedings.

(1) An individual licensed as an LPN who is currently under disciplinary action and qualifies for licensure as an RN may be issued an RN license under the same restrictions as the LPN.

(2) A nurse whose license is suspended under Subsection 58-31b-401(2)(d) may petition the division at any time that he can demonstrate that he can resume the competent practice of nursing.

R156-31b-402. Administrative Penalties.

In accordance with Subsections 58-31b-102(1) and 58-31b-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Using a protected title:

initial offense: $100 - $300

subsequent offense(s): $250 - $500

(2) Using any title that would cause a reasonable person to believe the user is licensed under this chapter:

initial offense: $50 - $250

subsequent offense(s): $200 - $500

(3) Conducting a nursing education program in the state for the purpose of qualifying individuals for licensure without board approval:

initial offense: $1,000 - $3,000

subsequent offense(s): $5,000 - $10,000

(4) Practicing or attempting to practice nursing without a license or with a restricted license:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(5) Impersonating a licensee or practicing under a false name:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(6) Knowingly employing an unlicensed person:
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000
(7) Knowingly permitting the use of a license by another person:
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000
(8) Obtaining a passing score, applying for or obtaining a license, or otherwise dealing with the division or board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(9) violating or aiding or abetting any other person to violate any statute, rule, or order regulating nursing:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(10) violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(11) Engaging in conduct that results in convictions of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime of moral turpitude or other crime:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(12) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(13) Engaging in conduct, including the use of intoxicants, drugs to the extent that the conduct does or may impair the ability to safely engage in practice as a nurse:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(14) Practicing or attempting to practice as a nurse when physically or mentally unfit to do so:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(15) Practicing or attempting to practice as a nurse through gross incompetence, gross negligence, or a pattern of incompetency or negligence:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(16) Practicing or attempting to practice as a nurse by any form of action or communication which is false, misleading, deceptive, or fraudulent:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(17) Practicing or attempting to practice as a nurse beyond the individual's scope of competency, abilities, or education:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(18) Practicing or attempting to practice as a nurse beyond the scope of licensure:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(20) Failure to safeguard a patient's right to privacy:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(21) Failure to provide nursing service in a manner that demonstrates respect for the patient's human dignity:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(22) Engaging in sexual relations with a patient:
initial offense: $5,000 - $10,000
subsequent offense(s): $10,000
(23) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000
(24) Unauthorized taking or personal use of nursing supplies from an employer:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(25) Unauthorized taking or personal use of a patient's personal property:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000
(26) Knowingly entering false or misleading information into a medical record or altering a medical record:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(27) Unlawful or inappropriate delegation of nursing care:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(28) Failure to exercise appropriate supervision:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(29) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(30) Failure to file or impeding the filing of required reports:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(31) Breach of confidentiality:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000
(32) Failure to pay a penalty:
Double the original penalty amount up to $10,000
(33) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:
initial offense: $500 - $1,000
subsequent offense(s): $500 - $2,000
(34) Failure to confine practice within the limits of competency:

initial offense: $500 - $1,000
subsequent offense(s): $500 - $2,000
(35) Any other conduct which constitutes unprofessional or unlawful conduct:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(36) Engaging in a sexual relationship with a patient surrogate:
initial offense: $1,000 - $5,000
subsequent offense(s): $5,000 - $10,000
(37) Engaging in practice in a disruptive manner:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000.

R156-31b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to destroy a license which has expired due to the issuance and receipt of an increased scope of practice license;

(2) an RN issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17a-620, or as may be otherwise provided by law;

(3) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:

(a) that standards of nursing practice are established and carried out so that safe and effective nursing care is provided to patients;

(b) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients;

(c) nurses' knowledge, skills and ability and determine current competence to carry out the requirements of their jobs;

(4) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:

(a) did not result in any form of abuse or exploitation of the surrogate or patient; and

(b) did not adversely alter or affect in any way:

(i) the nurse's professional judgment in treating the patient;

(ii) the nature of the nurse's relationship with the surrogate; or

(iii) the nurse/patient relationship; and

(5) engaging in disruptive behavior in the practice of nursing.

R156-31b-601. Nursing Education Program Standards.

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program must meet to qualify graduates for licensure under this chapter, which are hereby adopted and incorporated by reference, are respectively:

(1) the "Standards of Accreditation of Baccalaureate and Graduate Nursing Education Programs", August 1998, published by the CCNE; or

(2) the standards found in the "Accreditation Manual and Interpretative Guidelines by Program Type for Post Secondary, Baccalaureate, and Higher Degree Programs in Nursing", 2001 Revised, published by the NLNAC.

R156-31b-602. Nursing Education Program Full Approval.

(1) Full approval of a nursing program shall be granted when it becomes accredited by the NLNAC or the CCNE.

(2) Programs which have been granted full approval as of the effective date of these rules and are not accredited, must become accredited within five years or be placed on probationary status.

R156-31b-603. Nursing Education Program Provisional Approval.

(1) The division may grant provisional approval to a nursing education program for a period not to exceed three years after the date of the first graduating class, provided the program:

(a) is located or available within the state;

(b) is newly organized;

(c) meets all standards for approval except accreditation; and

(d) is progressing in a reasonable manner to qualify for full approval by obtaining accreditation.

(2) A nursing education program that receives approval from the Utah Board of Regents shall be granted provisional approval status by the Division in collaboration with the Board. Provisional approval granted under this subsection shall not exceed a time period of three years after the date of the first graduating class.

(3) Programs which have been granted provisional approval status shall submit an annual report to the Division on the form prescribed by the Division.

(4) Programs which have been granted provisional approval as of the effective date of these rules and are not accredited, must become accredited within five years.

R156-31b-604. Nursing Education Program Probationary Approval.

(1) The division may place on probationary approval status a nursing education program for a period not to exceed three years provided the program:

(a) is located or available within the state;

(b) is found to be out of compliance with the standards for full approval to the extent that the ability of the program to competently educate nursing students is impaired; and

(c) provides a plan of correction which is reasonable and includes an adequate safeguard of the student and public.

(2) The division may place on probationary approval status a program which implements an outreach program or satellite program without prior notification of the Division.

(3) Programs which have been granted probationary approval status shall submit an annual report to the division on the form prescribed by the division.

R156-31b-605. Nursing Education Program Notification of Change.

(1) Educational institutions wishing to begin a new nursing education program shall submit an application to the division for approval at least one year prior to the implementation of the program, or shall document program approval from the Utah Board of Regents.

(2) An approved program that expands onto a satellite campus or implements an outreach program shall notify the Division at least one semester before the intended change.

R156-31b-606. Nursing Education Program Surveys.

The division may conduct a survey of nursing education programs to monitor compliance with these rules.

R156-31b-701. Delegation of Nursing Tasks.

In accordance with Subsection 58-31b-102(10)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1) The nurse delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient/client. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients/clients in all situations. The decision to delegate must be based on careful analysis of the patient's/client's needs and circumstances.

(2) The licensed nurse who is delegating a nursing task shall:

(a) verify and evaluate the orders;

(b) perform a nursing assessment;

(c) determine whether the task can be safely performed by an unlicensed assistive personnel or whether it requires a licensed health care provider;

(d) verify that the delegatee has the competence to perform the delegated task prior to performing it;

(e) provide instruction and direction necessary to safely perform the specific task; and

(f) provide ongoing supervision and evaluation of the delegatee who is performing the task.

(3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.

(a) The following factors shall be evaluated to determine the level of supervision needed:

(i) the stability of the condition of the patient/client;

(ii) the training and capability of the delegatee;

(iii) the nature of the task being delegated; and

(iv) the proximity and availability of the delegator to the delegatee when the task will be performed.

(b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient/client shall make supervisory visits at appropriate intervals to:

(i) evaluate the patient's/client's health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task.

(4) Nursing tasks, to be delegated, shall meet the following criteria as applied to each specific patient/client situation:

(a) be considered routine care for the specific patient/client;

(b) pose little potential hazard for the patient/client;

(c) be performed with a predictable outcome for the patient/client;

(d) be administered according to a previously developed plan of care; and

(e) not inherently involve nursing judgment which cannot be separated from the procedure.

(5) If the nurse, upon review of the patient's/client's condition, complexity of the task, ability of the unlicensed assistive personnel and other criteria as deemed appropriate by the nurse, determines that the unlicensed assistive personnel cannot safely provide care, the nurse shall not delegate the task.

R156-31b-702. Scope of Practice.

(1) The lawful scope of practice for an RN employed by a department of health shall include implementation of standing orders and protocols, and completion and providing to a patient of prescriptions which have been prepared and signed by a physician in accordance with the provisions of Section 58-17a-620.

(2) An APRN who chooses to change or expand from a primary focus of practice must be able to document competency within that expanded practice based on education, experience and certification. The burden to demonstrate competency rests upon the licensee.

(3) An individual licensed as either an APRN or a CRNA may practice within the scope of practice of a RN under his APRN or CRNA license.

KEY: licensing, nurses

September 4, 2001 **58-31b-101**
58-1-106(1)
58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-38. Residence Lien Restriction and Lien Recovery Fund Rules.
R156-38-101. Title.

These rules are known as the "Residence Lien Restriction and Lien Recovery Fund Act Rules."

R156-38-102. Definitions.

In addition to the definitions in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing, which shall apply to these rules, as used in these rules:

(1) "Claimant" means a person who submits an application or claim for payment from the fund.

(2) "Construction project", as used in Subsection 38-11-203(4), means all qualified services related to the written contract required by Subsection 38-11-204(3)(a).

(3) "Contracting entity" means an original contractor, a factory built housing retailer, or a real estate developer that contracts with a homeowner.

(4) "Homeowner" means the owner of an owner-occupied residence.

(5) "Necessary party" includes the division, on behalf of the fund, and the claimant.

(6) "Owner", as defined in Subsection 38-11-102(15), does not include any person or developer who builds residences that are offered for sale to the public.

(7) "Permissive party" includes a licensee or qualified beneficiary who will be required to reimburse the fund if a claimant's claim is paid from the fund.

R156-38-103a. Authority - Purpose - Organization.

(1) These rules are adopted by the division under the authority of Section 38-11-103 to enable the division to administer Title 38, Chapter 11, the Residence Lien Restriction and Lien Recovery Fund Act.

(2) The organization of these rules is patterned after the organization of Title 38, Chapter 11.

R156-38-103b. Duties, Functions, and Responsibilities of the Division.

The duties, functions and responsibilities of the division with respect to the administration of Title 38, Chapter 11, shall, to the extent applicable and not in conflict with the Act or these rules, be in accordance with Section 58-1-106.

R156-38-104. Board.

Board meetings shall comply with the requirements set forth in Section R156-1-204.

R156-38-105. Adjudicative Proceedings.

(1) The classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or these rules.

(5) Claims shall be filed with the division and served upon all necessary and permissive parties.

(6) Service of claims or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each registrant to maintain a current address with the division.

(7) A permissive party is required to file a response to a claim against the fund within 30 days of notification by the division of the filing of the claim, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim.

(8) The findings of fact and conclusions of law established by a judgment entered by a civil court or a final order entered by an administrative agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudicative proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

R156-38-108. Notification of Rights under Title 38, Chapter 11.

(1) A notice in substantially the following form shall prominently appear in an easy-to-read type style and size in every contract between an original contractor and homeowner and in every notice of intent to hold and claim lien filed under Section 38-1-7 against a homeowner or against an owner-occupied residence:

"X. PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if and only if the following conditions are satisfied:

(1) the owner entered into a written contract an original contractor, a factory built housing retailer, or a real estate

developer;

(2) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and

(3) the owner paid in full the original contractor, factory built housing retailer, or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract."

R156-38-109. Format for Form Affidavit and Motion.

The form affidavit and motion required under Subsection 38-1-11(4) shall be prepared by the Office of the Attorney General after consultation with the director. The form shall be an answer, affidavit, and motion for summary judgment that is clearly written and easy to understand. The form shall solicit all necessary information to determine if a homeowner is entitled to the defense provided for in Section 38-11-107.

R156-38-202a. Initial Assessment Procedures.

(1) The initial assessment shall be a flat or identical assessment levied against all qualified beneficiaries to create the fund.

(2) The amount of the initial assessment shall be established by the division and board in accordance with the procedures for a "new program" under Subsection 63-38-3.2(5).

R156-38-202b. Special Assessment Procedures.

(1) Special assessments shall take into consideration the claims history against the fund.

(2) The amount of special assessments shall be established by the division and board in accordance with the procedures set forth in Subsection 38-11-206(1).

R156-38-203. Limitation on Payment of Claims.

(1) Claims may be paid prior to the pro-rata adjustment required by Subsection 38-11-203(4)(b) if, based upon an evaluation of the notices of commencement of action filed with respect to an owner-occupied residence or the total claim filings on an owner-occupied residence, the division determines that a pro-rata payment will likely not be required.

(2) If any claims have been paid before the division determines a pro-rata payment will likely be required, the division will notify the claimants of the likely adjustment and that the claimants will be required to reimburse the division when the final pro-rata amounts are determined.

R156-38-204a. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the written contract between the homeowner and the contracting entity; or

(b) a copy of a civil judgment containing a finding that the homeowner entered into a written contract in compliance the requirements of Subsection 38-11-204(3)(a);

(2) if the claim involves an original contractor, documentation that the original contractor is licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(3) one of the following:

(a) an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract;

(b) a copy of a civil judgment containing a finding that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or

(c) documentation that the claimant has been prevented from satisfying Subsections (a) and (b), together with independent evidence establishing that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract;

(4) one or more of the following as required:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against a contracting entity or subcontractor as described in Subsection 38-11-204(3)(c) to recover monies owed for qualified services performed on the owner-occupied residence, filed within 180 days from the date the claimant last provided qualified services; or

(b) a copy of the Notice of Commencement of Action filed with the division; or

(c) documentation that a bankruptcy filing by the contracting entity or subcontractor prevented claimant from satisfying Subsections (a) and (b);

(5) one of the following:

(a) a copy of a civil judgment entered in favor of claimant against the contracting entity or subcontractor containing a finding that the contracting entity or subcontractor failed to pay the claimant pursuant to their contract with the claimant and any amendments to the contract; or

(b) documentation that a bankruptcy filing by the contracting entity or subcontractor prevented the claimant from obtaining such a civil judgment, together with independent evidence establishing that the contracting entity or subcontractor failed to pay the claimant pursuant to their contract with the claimant and any amendments to the contract;

(6) one or more of the following as required:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of claimant and a copy of the return of service of the supplemental order indicating either that service was accomplished on the contracting entity or subcontractor or that said contracting entity or subcontractor could not be located or served;

(b) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; or

(c) documentation that a bankruptcy filing or other action by the contracting entity or subcontractor prevented the claimant from satisfying Subparagraphs (a) and (b);

(7) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding

officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and

(8) one of the following:

(a) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16);

(b) a copy of a civil judgment containing a finding that the homeowner is an owner as defined by Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16); or

(c) documentation that the claimant has been prevented from obtaining an owner-occupied residence affidavit together with independent evidence establishing that the homeowner is an owner as defined by Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16).

(9) one or more of the following:

(a) a copy of invoices setting forth a description of, the performance dates of, and the value of the qualified services claimed;

(b) a copy of a civil judgment containing a finding setting forth a description of, the performance dates of, and the value of the qualified services claimed; or

(c) independent evidence setting forth a description of, the performance dates of, and the value of the qualified services claimed.

(10) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to produce all documentation specified under this rule to satisfy any requirement to recover from the fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

(11) A separate claim must be filed for each residence and a separate filing fee must be paid for each claim.

R156-38-204b. Format for Notice of Commencement of Action.

The Notice of Commencement required under Subsection R156-38-204a(5)(b) shall be in substantially the following format:

TABLE I

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

John Doe,	:	Notice of Commencement
Plaintiff	:	of Action
	:	
-vs-	:	NCA No.
	:	
Richard Roe,	:	
Defendant	:	

Notice is hereby provided of the filing of Case No. (number) on (date) before (Court).

Brief explanation of nature of case:

Address of defendant:

Name and address of potential fund claimant:

Name and address of original contractor, subcontractor, real estate developer, and/or factory built housing retailer described in Subsection 38-11-204(3)(c):

For each owner-occupied residence included in the civil action:

Name and address of the owner of the owner-occupied residence;

Street address of the owner-occupied residence;

Amount of damages sought against the owner-occupied residence;

Last date qualified services were provided for the owner-occupied residence by the potential fund claimant:

Signature of Claimant or claimant's representative

Date of signature

R156-38-204c. Claims Against the Fund by Laborers - Supporting Documents.

(1) The following supporting documents shall, at a minimum, accompany each laborer claim for recovery from the fund:

(a) one of the following:

(i) a copy of a wage claim assignment filed with the Industrial Commission of the Utah Labor Division for the amount of the claim, together with all supporting documents submitted in conjunction therewith; or

(ii) a copy of an action filed by claimant against claimant's employer to recover wages owed;

(b) one of the following:

(i) a copy of a final administrative order for payment issued by the Industrial Commission of Utah Labor Division containing a finding that the claimant is an employee and that the claimant has not been paid wages due for work performed at the site of construction on an owner-occupied residence;

(ii) a copy of a civil judgment entered in favor of claimant against the employer containing a finding that the employer failed to pay the claimant wages due for work performed at the site of construction on an owner-occupied residence; or

(iii) a copy of a bankruptcy filing by the employer which prevented the entry of an order or a judgment against the employer;

(c) one of the following:

(i) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16);

(ii) a copy of a civil judgment containing a finding that the homeowner is an owner as defined by Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16); or

(iii) documentation that the claimant has been prevented from obtaining an owner-occupied residence affidavit together with independent evidence establishing that the owner is an owner as defined by Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16).

(2) When a laborer makes claim on multiple residences as a result of a single incident of non-payment by the same employer, the division must require payment of at least one application fee required under Section 38-11-204(1)(b) and at least one registration fee required under Subsection 38-11-204(7), but may waive additional application and registration fees for claims for the additional residences, where no legitimate

purpose would be served by requiring separate filings.

R156-38-204d. Calculation of Costs, Attorney Fees and Interest for Payable Claims.

(1) Payment for qualified services, costs, and interest shall be made as specified in Section 38-11-203.

(2) When a claimant requests payment of multiple claims supported by a single judgment or other common documentation and the judgment or documentation does not differentiate costs and attorney fees by owner-occupied residence, the amount of costs and attorney fees shall be allocated among the related claims using the following formula: (Qualified services attributable to the owner-occupied residence divided by Total qualified services awarded as judgment principal or total documented qualified services) x Total costs or total attorney fees.

(3) For claims determined by the division to be payable from the fund, the division shall order payment of attorney fees in an aggregate amount not exceeding the following:

(a) If a civil judgment awards a specific dollar amount for attorney fees, the division shall order payment as ordered in the civil judgment, to the extent that the attorney fees are attributable to the owner-occupied residence at issue in the claim.

(b) Otherwise, the division shall order payment of reasonable attorney fees, documented according to the provisions of Rule 4-505, Utah Code of Judicial Administration, subject to the following limitations:

(i) if the payable amount of qualified services is $3,000 or less, not more than 33% of the value of the qualified services and not exceeding $750;

(ii) if the payable amount of qualified services is greater than $3,000 and $10,000 or less, not more than 25% of the value of qualified services and not exceeding $2,000; or

(iii) if the payable amount of qualified services is greater than $10,000, attorney fees in an amount of not more than 20% of the value of qualified services and not exceeding $7,000.

(iv) The above limits may be waived by the director in those unique claims where manifest injustice would otherwise result. The burden is on the claimant to demonstrate manifest injustice.

(4) Post-judgment costs shall be limited to those costs allowable by a district court, such as costs of service, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

R156-38-301. Registration as a Qualified Beneficiary - All License Classifications Required to Register Unless Specifically Exempted - Exempted Classifications.

(1) All license classifications of contractors are determined to be regularly engaged in providing qualified services for purposes of automatic registration as a qualified beneficiary, as set forth in Subsections 38-11-301(1) and (2), with the exception of the following license classifications:

TABLE II

Primary Classification Number	Subclassification Number	Classification
E100		General Engineering Contractor
	S211	Boiler Installation Contractor
	S213	Industrial Piping Contractor
	S262	Granite and Pressure Grouting Contractor
S320		Steel Erection Contractor
	S321	Steel Reinforcing Contractor
	S322	Metal Building Erection Contractor
	S323	Structural Stud Erection Contractor
S340		Sheet Metal Contractor
S360		Refrigeration Contractor
S440		Sign Installation Contractor
	S441	Non Electrical Outdoor Advertising Sign Contractor
S450		Mechanical Insulation Contractor
S470		Petroleum System Contractor
S480		Piers and Foundations Contractor
I101		General Engineering Trades Instructor
I102		General Building Trades Instructor
I103		General Electrical Trades Instructor
I104		General Plumbing Trades Instructor
I105		General Mechanical Trades Instructor

(2) Any person holding a license requiring registration in the fund that is on inactive status on the assessment date of any special assessment of the fund, shall be exempt from payment of that specific assessment and any assessment made during the time the license remains on inactive status and the licensee does not engage in the licensed occupation or profession.

(3) Before a licensee on inactive status, who would otherwise be required to pay an assessment, can be reinstated to an active status, the licensee must pay:

(a) the initial assessment of $195 assessed July 1, 1995, if that assessment has never been paid by that licensee; and

(b) the most recent special assessment immediately preceding the date on which the license is reinstated to active status.

R156-38-302. Renewal and Reinstatement Procedures.

(1) Renewal notices required in connection with a special assessment shall be mailed to each registrant at least 30 days prior to the expiration date for the existing registration established in the renewal notice. Unless the registrant pays the special assessment by the expiration date shown on the renewal notice, the registrant's registration in the fund automatically expires on the expiration date.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's records. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each registrant to maintain a current address with the division.

(3) Renewal notices shall specify the amount of the special assessment, the application requirement, and other renewal requirements, if any; shall require that each registrant document or certify that the registrant meets the renewal requirements; and shall advise the registrant of the consequences of failing to renew a registration.

(4) Renewal notices shall specify a renewal application due date no later than the expiration date for the existing registration.

(5) Renewal applications must be received by the division in its ordinary course of business on or before the renewal

application due date in order to be processed as a renewal application. Late applications will be processed as reinstatement applications.

(6) A registrant whose registration has expired may have the registration reinstated by complying with the requirements and procedures specified in Subsection 38-11-302(5).

R156-38-401. Requirements for a Letter of Credit and/or Evidence of a Cash Deposit as Alternate Security for Mechanics' Lien.

To qualify as alternate security under Section 38-1-28:

(1) A "letter of credit" must be issued by a federally insured depository institution and satisfy the requirements of Section 70A-5-101, et seq.

(2) "Evidence of a cash deposit" must be an account at a federally insured depository institution that is pledged to the protected party and is payable to the protected party upon the occurrence of specified conditions in a written agreement.

KEY: licensing, contractors, liens

September 17, 2001	**38-11-101**
Notice of Continuation April 6, 2000	**58-1-106(1)**
	58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-55c. Construction Trades Licensing Act Plumber Licensing Rules.
R156-55c-101. Title.

These rules are known as the "Construction Trades Licensing Act Plumber Licensing Rules".

R156-55c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55 or these rules:

(1) "Board" means the Plumbers Licensing Board.

(2) "Plumber" means apprentice plumber, residential apprentice plumber, journeyman plumber, and residential journeyman plumber.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(5), in Subsection R156-55c-501.

R156-55c-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 55.

R156-55c-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-55c-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the application requirements for licensure in Section 58-55-302 are defined, clarified, or established as follows:

(1) an applicant for licensure shall submit an application for license only after having met all requirements for licensure set forth in Section 58-55-302 and these rules; and

(2) the application must be accompanied by all documents or other evidence required demonstrating the applicant is qualified for licensure.

R156-55c-302b. Qualifications for Licensure - Apprenticeship Education.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the apprenticeship education requirements for licensure in Subsection 58-55-302(3)(a) and (b) are defined, clarified, or established as follows:

(1) a journeyman plumber applicant seeking licensure under training and instruction requirements set forth in Subsection R156-55c-302c(1)(a) shall demonstrate successful completion of not less than 576 clock hours of classroom instruction in an apprenticeship program meeting the requirements of Section R156-55c-601; and

(2) a residential journeyman plumber applicant seeking licensure under training and instruction requirements set forth in Subsection R156-55c-302c(2)(a) shall demonstrate successful completion of not less than 432 hours of classroom instruction in an apprenticeship program meeting the requirements of Section R156-55c-601.

R156-55c-302c. Qualification for Licensure - Training and Instruction Requirement.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the training and instruction requirements for licensure in Subsection 58-55-302(3)(a) and (b) are defined, clarified, or established as follows:

(1) A journeyman plumber applicant shall demonstrate successful completion of:

(a) 8,000 hours of training and instruction, in not less than four years, while licensed as an apprentice plumber, completed in an apprenticeship program of training meeting the requirements of Section R156-55c-601, in the following experience areas and approximate number of hours as identified in Table I; or

(b) 16,000 hours of experience, in not less than eight years, as a plumber under the supervision of a journeyman plumber with a minimum number of hours of experience in each of the experience areas required under Subsection (1)(a).

TABLE I
Training and Instruction

Work Process	Approximate Hours
A. Use of hand tools, equipment and pipe machinery	200
B. Installation of piping for waste, soil, sewer vent and leader lines	2,250
C. Installation of hot and cold water for domestic purposes	1,600
D. Installation and setting of plumbing appliances and fixtures	1,600
E. Maintenance and repair of plumbing	800
F. General pipe work including process and industrial hours	800
G. Gas piping or service piping	500
H. Welding as it applies to the trade	100
I. Service and maintenance of gas controls and equipment	200

(2) A residential journeyman plumber applicant shall demonstrate successful completion of:

(a) 6,000 hours of training and instruction, in not less than three years, while licensed as an apprentice plumber or residential apprentice plumber, completed an apprenticeship program of training meeting the requirements of Section R156-55c-601, in the following experience areas and approximate number of hours as identified in Table II; or

(b) 12,000 hours of experience, in not less than six years, in a maintenance or repair trade for which the applicant can document that not less than 75% of the work performed was directly involved in the plumbing trade including as a minimum the number of hours performing work in each of the experience areas required under Subsection (2)(a).

TABLE II
Training and Instruction

Work Process	Approximate Hours
A. Use of hand tools, equipment and	100

	pipe machinery	
B.	Installation of piping for waste, soil, sewer vent and leader lines	1,800
C.	Installation of hot and cold water for domestic purposes	1,400
D.	Installation and setting of plumbing appliances and fixtures	1,200
E.	Maintenance and repair of plumbing	800
F.	Gas piping or service piping	500
G.	Service and maintenance of gas controls and equipment	200

(3) A residential journeyman plumber applying for a journeyman plumbers license must complete 2,000 hours of on the job training in industrial or commercial plumbing while licensed as an apprentice plumber and complete an approved fourth year course of classroom instruction.

R156-55c-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Subsection 58-55-302(1)(c)(i) are defined, clarified, or established as follows:

(1) The examination which must be passed and the minimum score required on each examination for licensure as a journeyman plumber and residential journeyman plumber is the Utah Plumbers Licensing Examination which consists of a written section and practical section with a minimum score of 70% on each section.

(2) Admission to the examinations is permitted after the applicant has completed all requirements for licensure set forth in Sections R156-55c-302b and R156-55c-302c.

(3) An examinee who passes one section of the Utah Plumbers Licensing Examination and fails the other section shall be required to retake and pass only the section failed.

(4) An examinee who fails either or both sections of the Utah Plumbers Licensing Examination two times shall not be permitted to retake the examination until:

(a) the examinee meets with the board and the board outlines a required remedial program of education or experience of up to one year in length which must be completed before the examinee may again take the examination; and

(b) the examinee successfully completes the required remedial program of education or experience.

(c) Upon completion of the required remedial program of education and experience, the examinee shall retake the failed portions of the examination a maximum of two times of the next two examinations offered. Failure to pass both required portions of the examination upon retake shall result in denial of their application for licensure. An applicant continuing to seek licensure must reapply for licensure by filing a new application with the required fee and may do so only after completing additional remedial education and experience as determined by the division and the board.

R156-55c-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 55, is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-55c-307. Licensure by Endorsement.

In accordance with the provisions of Section 58-1-302, the division may issue an individual a license as an apprentice plumber, residential apprentice plumber, journeyman plumber, or residential journeyman plumber by endorsement, in accordance with the following:

(1) An applicant for licensure by endorsement as a journeyman plumber or residential journeyman plumber has the burden to demonstrate that the apprenticeship instruction and training, or experience requirements in lieu of an apprenticeship, and the examination requirements of the state or jurisdiction in which the applicant holds licensure are equal to the requirement of this state or were equal to the requirements of this state at the time the applicant received licensure in the other state.

(2) An applicant for licensure as an apprentice or apprentice residential plumber who has completed part of apprenticeship training and instruction in another jurisdiction has the burden to demonstrate that the apprenticeship program in the other state is equivalent to an approved apprenticeship program in this state as a condition of the applicant being given credit for completion of an apprenticeship program in another state.

R156-55c-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in the plumbing trade as an apprentice plumber when not under the immediate supervision of a journeyman plumber, or a residential apprentice plumber when not under the general supervision of a licensed journeyman plumber or residential journeyman plumber;

(2) engaging in the plumbing trade as an apprentice plumber or as a residential apprentice plumber except in accordance with instructions of the supervising journeyman or residential journeyman plumber;

(3) acting as a journeyman plumber or residential journeyman plumber on residential projects when supervising more than two apprentice plumbers or residential apprentice plumbers, or a combination of them, and one unlicensed assistant;

(4) acting as a journeyman plumber on industrial or commercial projects when supervising more than one apprentice plumber and one unlicensed assistant; and

(5) failure as a licensed plumber to carry a copy of his current plumbers license on his person or in close proximity to his person when performing plumbing work or to display that license upon request of a representative of the division or any law enforcement officer.

R156-55c-601. Qualifications for Approval of Apprenticeship Program.

An apprenticeship program qualifying an applicant for licensure as a journeyman plumber or residential journeyman plumber to meet the education requirements for licensure under

Section R156-55c-302b and the training and instruction requirements for licensure under Section R156-55c-302c shall meet the following:

(1) Formal classroom instruction shall be:

(a) conducted by Local Education Agency (LEA), or by some other entity which demonstrates to the division and board that it conducts classroom instruction equivalent to that of a LEA;

(b) conducted by competent qualified staff and shall include measures of competency and achievement level of each apprentice; and

(c) meet the following minimum required hours of classroom instruction:

(i) apprentice plumber classroom instruction of not less than 576 clock hours; and

(ii) residential apprentice plumber classroom instruction of not less than 432 clock hours.

(2) Training and instruction shall:

(a) be under the immediate supervision of a licensed journeyman plumber for an apprentice plumber or under the immediate supervision of a licensed journeyman plumber or residential journeyman plumber for a residential apprentice plumber;

(b) include measurements of an apprentice's performance of work in all experience areas set forth in Table I for apprentices preparing for a journeyman plumbers license, or measurements of an apprentice's performance of work in all experience areas set forth in Table II for apprentices preparing for a residential journeyman plumbers license; and

(c) meet the following minimum hours of training and instruction:

(i) apprentice plumber training and instruction of not less than 8,000 hours in not less than four years in work areas defined in Table I; and

(ii) residential apprentice plumber training and instruction of not less than 6,000 hours in not less than three years in work areas defined in Table II.

R156-55c-602. Supervision of Apprentices and Unlicensed Assistants.

(1) Apprentice plumbers shall engage in plumbing only in accordance with the following:

(a) while engaging in the trade of plumbing, an apprentice plumber shall be under the immediate supervision of a licensed journeyman plumber;

(b) while engaging in the trade of plumbing, a residential apprentice plumber shall be under the immediate supervision of a licensed journeyman plumber or residential journeyman plumber;

(c) the apprentice shall engage in plumbing in accordance with the instruction of the supervising journeyman plumber; and

(d) an apprentice shall work under a supervising journeyman plumber on commercial or industrial plumbing jobs in a ratio not to exceed one apprentice plumber to one supervising journeyman plumber, and on residential plumbing jobs in a ratio not to exceed two apprentice plumbers to one supervising journeyman plumber.

(2) Residential apprentice plumbers shall engage in plumbing only under a supervising journeyman plumber or residential journeyman plumber on residential plumbing jobs in a ratio not to exceed two residential apprentice plumbers to one supervising journeyman plumber.

(3) A supervising journeyman plumber or residential journeyman plumber may supervise in addition to apprentice plumbers or residential apprentice plumbers in accordance with Subsections (1) and (2), one unlicensed plumbing assistant who is not engaged in the trade of plumbing.

R156-55c-701. Proof of Licensure.

Each apprentice, residential apprentice, residential journeyman and journeyman plumber shall:

(1) carry on his person or in close proximity to his person his current license when he is engaged in the plumbing trade; and

(2) display his license to a representative of the division or any law enforcement officer upon request.

KEY: occupational licensing, licensing, plumbers*, plumbing*

September 4, 2001 58-1-106(1)
Notice of Continuation February 10, 1997 58-1-202(1)
58-55-101

R212. Community and Economic Development, Community Development, History.
R212-3. Memberships, Sales, Gifts, Bequests, Endowments.
R212-3-1. Scope and Applicability.

Purpose: To establish rules for handling disposition of proceeds and membership dues and make adjustments to prices of various publications.

R212-3-2. Definitions.

1. "board" means the Board of State History which acts as the Board of the Utah State Historical Society;
2. "society" means the Utah State Historical Society;
3. "division" means the Division of State History;
4. "historical magazine" means the Utah Historical Quarterly and Beehive History; and
5. "director" means the director of the Division of State History.

R212-3-3. Sales.

1. Prices for the sale of the historical magazine, books published by the division, microfilm, photos, and other published or facsimile documents shall be established annually by the director in consultation with the board.
2. Proceeds and earned interest from sales shall be deposited with the treasurer of the state as restricted interest bearing, nonlapsing revenue of the Society in accordance with Sections 9-8-206 and 9-8-207.
3. The disposition of the proceeds and earned interest shall be determined by the director in accordance with policy established by the board or in consultation with the board.

R212-3-4. Donations.

1. The society is authorized to receive gifts, grants, donations, bequests devises and endowments of money or property. These monies shall be used in accordance with directions provided by the donor and shall be kept in a separate line account as nonlapsing funds of the society together with earned interest.
2. If the donor makes no indication of the direction or use of the gifts, bequests, donations, devices, and endowments, these funds and interest on these funds shall be retained in a separate line account of the society as nonlapsing funds. Disbursement shall be made by the director in accordance with policy established by the board or in consultation with the board.
3. The board may review, or establish a policy of review and is authorized to receive, any gift, grant, donation, bequest, devise or endowment of money or property but need not.

R212-3-5. Memberships.

1. Membership dues shall be established annually by the director in consultation with the board according to Section 9-8-207(1).
2. Proceeds from memberships shall be kept in a separate line account as nonlapsing funds of the society together with earned interest.
3. Disbursement shall be made by the director in accordance with policy established by the board or in consultation with the board.

KEY: administrative procedure, historical society*
1992 9-8-206
Notice of Continuation September 26, 2001 9-8-207

R212. Community and Economic Development, History.
R212-4. Archaeological and Paleontological Permits.
R212-4-1. Authority.

Section 9-8-305 provides that the division shall make rules for the issuance of permits for the survey and excavation of archaeological resources.

R212-4-2. Purpose.

The primary purposes of issuing a permit are to:

A. Ensure that survey, excavation and related work are consistently and reliably executed by qualified personnel; and,

B. Ensure that the maximum amount of educational, scientific, archaeological, anthropological, and historical information is recovered and preserved, together with the physical recovery of items, and not lost to the people of Utah.

R212-4-3. Applicability.

This rule applies to lands owned or controlled by the state and its subdivisions, other than school or institutional trust lands. If, however, pursuant to Section 9-8-305, School and Institutional Trust Lands Administration delegates the authority to issue permits for survey or excavation on school and institutional trust lands to the division, then this rule applies to school and institutional trust lands, while that delegation is in force.

R212-4-4. Definitions.

A. Terms used in this rule are defined in Section 9-8-302.

B. In addition:

1. "board" means the Board of State History;

2. "division" means the Division of State History;

3. "director" means the Director of the division;

4. "recovery" means any disturbance, removal, appropriation, injury or destruction of archaeological resources.

5. "section" means the Antiquities Section of the division.

R212-4-5. Permit for Survey and Excavation of Archaeological Resources.

A. The division shall issue a permit for the survey or excavation of archaeological resources to individuals who demonstrate compliance with the following requirements:

1. Education, Experience, and Capabilities.

a. Archaeologists shall meet the minimum standards for education and experience set by federal regulation. The federal regulations, codified as 43 CFR 7.8, Subtitle A (October 1, 2000 Edition) as amended, Issuance of permits are hereby incorporated by reference.

b. Applicants shall submit a resume or vita as proof of compliance.

c. Provide written evidence indicating the ability to conduct surveys or the proposed excavation in a manner consistent with current professional practice, including access to proper equipment and facilities, and use of other personnel qualified to execute portions of the research design.

2. Possess written permission from the landowner to enter the property for the purpose of excavation or survey.

B. For excavation permits, the division shall require that the applicant:

1. Provide a research design which:

a) explicitly states the questions to be addressed;

b) the reasons for conducting the work;

c) defines the methods to be used;

d) describes the analysis to be performed;

e) outlines the expected results and the plans for reporting;

f) evaluates expected contributions of the proposed archaeological work to archaeological science and the field of anthropology or related disciplines;

g) provides for recovery of the maximum amount of historic, scientific, archaeological, anthropological, and educational information;

h) provides that the physical recovery of specimens and the reporting of archaeological information meet current standard of scientific rigor; and

i) provides that no specimen, site or portion of any site is removed from the state of Utah without explicit permission from the division and after consultation with landowners and any other agency managing any interest in the land.

2. Possess written proof of consultation with the appropriate Native American Tribe or Nation, if required by law.

3. Provide written proof of consultation with the Museum of Natural History.

4. Possess written proof of consultation with other agencies that manage other legal interests in the land.

C. Provide any other information requested by the division.

R212-4-6. Permit Provisions.

Permits shall contain the following provisions:

A. The permittees shall provide reports documenting results of the work and data obtained, and deliver relevant records, site forms, and reports to the section within the time specified in the permit.

B. A permittee who discovers human remains shall notify the landowner, and appropriate agencies pursuant to Section 9-9-403, and cease further activity, except after compliance with Section 9-9-403.

C. If the permittee fails to comply with statute, rule or the provisions of the permit, the division may terminate the permit and continue the study or grant another permittee the responsibility or opportunity to complete the research design.

D. Duration of Permits.

1. Permits for survey shall be issued for one year.

2. Permits for excavation shall be issued for the period of time necessary to accomplish the proposed work. The period of time may be extended by the division upon application of the permittee.

3. The Museum of Natural History shall be consulted if the duration of an excavation permit is to be modified.

E. Other provisions the division deems necessary.

R212-4-7. Application Review.

A. Application for a survey or excavation permit shall be made on a form provided by the section. Applicants shall fully complete the application form.

B. Applicants shall be notified of the acceptance or rejection of the completed application within 30 calendar days.

R212-4-8. Appeal of Decision.

Any applicant desiring review of a decision concerning an application may appeal the decision pursuant to R212-1.

R212-4-9. Violations of Statute or Rule.

If the division receives information indicating a violation of statute or rule, the division shall make a good faith effort to notify the alleged violator of the legal requirements and potential penalties. The division shall also notify the landowner, and take other actions deemed necessary.

R212-4-10. Records Access.

The division shall maintain records of archaeological sites and localities. Access to location information within these records shall be restricted to those with legitimate research interests, and those holding valid permits, landowners, or state or federal agencies in accordance with the requirements contained in 16 USC 470 Section 304, the National Historic Preservation Act of 1966, as amended, and Title 63, Chapter 2.

R212-4-11. Exceptions.

Exceptions to this rule may be granted, with landowner permission, in emergency cases requiring immediate action, if in the best judgment of the division the intent of the law will not be compromised. The division shall require that a permit application be filed as soon as possible. The division shall notify the board of this action as soon as possible.

KEY: administrative procedure, archaeology*,
1993 **9-8-302**
Notice of Continuation September 26, 2001 **9-8-305**
9-9-403
63-2
16 USC 470 Sec. 304
43 CFR 7.8 Subtitle A

R212. Community and Economic Development, Community Development, History.

R212-6. State Register for Historic Resources and Archaeological Sites.

R212-6-1. Scope and Applicability.

Purpose: To establish compatibility between the State and National Register. To establish standards for state landmarks consistent with Sections 9-8-306, 9-8-401, 9-8-402 and 9-8-403.

R212-6-2. Definitions.

A. Terms used in this rule are defined in Sections 9-8-302 and 9-8-402(1).

B. In addition:

1. "division" means the Division of State History;

2. "director" means the director of the Division of State History;

3. "board" means the Board of State History.

R212-6-3. State Register for Historic Resources and Archaeological Sites.

1. The State Register for properties and sites incorporates by reference, within this rule, 36 CFR 60.4, 1996 Edition for the selecting of properties and sites as historical places within Utah.

2. Properties or sites recommended for National Register consideration shall automatically be listed on the State Register after they have been recommended by the Board of State History for National Register listing and after the State Historic Preservation Officer has nominated them for listing on the National Register.

3. Should a property or site be found to be ineligible for the National Register by the Keeper of the National Register, National Park Service, that property may be reviewed for removal from the State Register.

4. Properties or sites currently listed on the State Register may be reviewed for National Register eligibility. All cultural properties not listed on the National Register within seven years of adoption of these rules shall be reviewed.

5. Properties or sites may be removed from Century and State Registers only after notification to the owner and a hearing by the board.

R212-6-4. State Landmark Listing for Archaeological and Anthropological Sites and Localities.

Archaeological and anthropological sites and localities listed on the State Register may be listed as "State Landmarks" after nomination by the property owners and review and acceptance by the Board of State History.

KEY: historic sites, national register*, state register*

March 4, 1997	**9-8-302**
Notice of Continuation September 26, 2001	**9-8-306**
	9-8-401
	9-8-402
	9-8-403
	63-46b-1

R212. Community and Economic Development, Community Development, History. **16 USC 470 Sec. 110**

R212-7. Cultural Resource Management.

R212-7-1. Scope and Applicability.

Purpose: to establish time frames and procedures in response to state and federal agency requests in conformance with applicable state and federal cultural resource management laws contained in Section 9-8-404; 36 CFR 800 and 16 USC 470 Section 110 of the National Historic Preservation Act as amended.

R212-7-2. Definitions.

A. Terms used in this rule are defined in Section 9-8-302, 36 CFR 800, and 16 USC 470 Section 110 of the National Historic Preservation Act as amended.

B. In addition:

1. "division" means the Division of State History;

2. "director" means the director of the Division of State History;

3. "agency" means the federal or state agency seeking division comments.

R212-7-3. Conformance of Division to State Rules and Federal Regulations.

A. The Division of State History will follow applicable regulations pursuant to an annually executed agreement with the National Park Service and state rules to insure that its activities take into account the effect on cultural.

1. The division shall seek creative solutions to adverse effects on cultural resources and seek ways to allow adverse effects to be mitigated creatively.

B. In the interest of the public, the division shall encourage alternative proposals which may allow for the destruction of a site(s) or area(s) when alternative mitigation or treatment plans can be made which will allow for the development, endowment, promotion, scientific investigation of other resources more suited to public education, education involvement, appreciation and science.

R212-7-4. Division Responsibility to Other Agencies.

1. The division may consult with or provide professional information to state and federal agencies requesting consultation under Section 9-8-404 and under 16 USC 470 Sections 106 and 110 the Historic Preservation Act of 1966 as amended. These federal regulations are incorporated here by reference.

2. The information provided will be regarding the agency-established standards or the Secretary of the Interior Standards.

3. If the division responds, then it shall state that the agency shall take into account the comments.

4. Responses will be provided within 30 days of receipt of request.

5. Adequate completion of permit requirements for excavation on lands may satisfy mitigation as far as the State Historic Preservation Officer is concerned.

KEY: historic preservation, cultural resource*, management
1992 9-8-302
Notice of Continuation September 26, 2001 9-8-404
16 USC 470 Sec. 106

R223. Community and Economic Development, Community Development, State Library.

R223-2. Public Library Online Access for Eligibility to Receive Public Funds.

R223-2-1. Authority and Policy.

(1) The Utah State Library Division hereby adopts this rule in accordance with Sections 63-46a-1 et seq., and 9-7-213, 9-7-215, and 9-7-216 for the purpose of determining public library eligibility to receive state funds.

(2) For a public library that offers public access to the Internet to retain eligibility to receive state funds, the Library Board shall adopt and enforce a Policy that meets the process and content standards defined in 9-7-216.

R223-2-2. Definitions.

In addition to the terms defined in Section 9-7-101:

(1) "Minor" means any individual younger than 18 years of age.

(2) "Obscene" means materials meeting the standard established by the U.S. Supreme Court in Miller v. California, 413 U.S. 15 (1973) whereby an affirmative answer is required to each of the three following questions:

(a) whether "the average person applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest;

(b) whether the work depicts or describes, in a patently offensive way, sexual content specifically defined by the applicable state law; and

(c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

R223-2-3. Reporting.

(1) Each Library Board shall submit a copy of its Policy to the Director of the State Library Division no later than July 1, 2001, accompanied by a letter signed by the Library Director and Library Board Chair affirming that the Policy was adopted in an open meeting, that notice of the Policy's availability has been posted in a conspicuous place within the library, and that the Policy is intended to meet the provisions of this rule and Sections 9-7-213 and 9-7-215.

(2) All documents submitted shall be classified as public records in accordance with the Government Records Access and Management Act (Title 63, Chapter 2).

R223-2-4. State Library Administrative Procedures.

(1) The State Library Division shall review all public library policies received by July 1, 2001, for compliance with this rule.

(2) The Director of the State Library Division shall issue notices of compliance or non-compliance within 30 days following the receipt of the policy. Any library not submitting a policy shall receive a notice of non-compliance.

(3) Appeals to the notice of non-compliance shall be submitted in writing, within 30 days of the date of the notice, to the Executive Director of the Department of Community and Economic Development, who shall respond within 30 days.

(4) A public library receiving a notice of non-compliance shall not be eligible to receive state funds until the condition(s) upon which the notice of non-compliance is based are corrected and a notice of compliance is received.

(5) A public library in compliance shall be eligible to receive state funds in state fiscal year 2002 and subsequent years, as long as a current Policy is resubmitted to the State Library Division no later than July 1, 2004, and every three years thereafter.

(6) A public library otherwise in compliance with the provisions of this rule shall not lose eligibility to receive state funds unless a complaint submitted to the Library Board under its Policy results in a ruling from a court of law that a minor has accessed obscene material expressly due to insufficient enforcement of the Policy by the local library.

KEY: libraries, public library, Internet access*

September 7, 2001 **9-7-213**
9-7-215

R277. Education, Administration.

R277-432. Twenty Percent Funding for Class Size Reduction.

R277-432-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "USOE" means the Utah State Office of Education.

C. "Pupil in Average Daily Membership (ADM)" means a full-day equivalent pupil.

D. "Alternative housing" means additional students housed, as of the prior year October 1 count, by using year-round schooling, extended day scheduling, double session scheduling, portable buildings, contracting out for additional space, busing to other districts, and other approved housing strategies.

E. "Assessed valuation" means the assessed value of real property owned by a school district certified by the State Tax Commission to the Board each year.

F. "Derived assessed valuation" means current collections of taxes within the county (no prior year penalties or redemptions) divided by the same year tax rates.

G. "Need" means the increased number of students in grades K-6 and the total number of additional students accommodated in grades K-6 by alternative housing.

H. "Growth" means:

(1) the increased number of students during the most recent prior year expressed as a percentage compared to the total increased number of students in the state; and

(2) the percentage increase of students in a district compared to the previous year's total.

I. "Effort" means:

(1) the district's prior three year average of total district tax levy; and

(2) the funds the district used to meet bond and interest payments as a percentage of the money raised during the prior three years from the .0024 tax rate allowable for capital outlay and debt service.

J. "Ability" means the district's prior three year average derived assessed valuation per ADM.

R277-432-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, Section 53A-1-402(1)(f) which directs the Board to develop rules for school productivity, cost effectiveness, and the minimum school program, and Section 53A-17a-124.5(7)(b) which directs the Board to establish uniform class size reporting rules for districts.

B. The purpose of this rule is to provide eligibility requirements and procedures for distributing state funds appropriated for 20 percent of the class size reduction program.

R277-432-3. Class Size Reduction Program.

A. The additional appropriation for class size reduction shall be distributed to school districts based upon a formula developed by the Board that takes into account:

(1) a school district's ability to raise money for growth and accompanying capital facility needs;

(2) need as reflected by:

(a) the current number of students in the affected grades in the district who are in alternative housing; and

(b) growth in the affected grades both within the district and compared to the state as a whole; and

(3) the school district's past and present efforts to raise money and to construct new or to better utilize existing facilities through scheduling or delivery systems in order to deal with class size.

B. A district may receive state class size reduction funds under the formula specified in Section 53A-17a-124.5(2)(b) in direct proportion to its weighting on the formula and its proportionate number of students in the state.

C. The formula consists of factors that include need, effort and ability.

D. Calculation to determine a district's weighting and the distribution amount for class size reduction shall be made based on a statistical formula provided by the USOE Director of Finance or his designee.

(1) The statistical formula developed by the Board for the distribution of class size reduction funds to school districts is entitled "Class Size Reduction Funding Formula."

(2) The formula shall be available for public inspection at the USOE Finance and Statistics Section, 250 East 500 South, S.L.C. Utah.

KEY: educational facilities, education finance
September 4, 1996 Art X Sec 3
Notice of Continuation September 4, 2001 53A-1-402(1)(f)
53A-17a-124.5(7)(b)
53A-17a-124.5(2)(b)

R277. Education, Administration.
R277-466. Modified Centennial Schools Program.
R277-466-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "USOE" means the Utah State Office of Education.

C. "Centennial school" means a Utah public school selected to participate in the program authorized under Sections 53A-1a-301 through 53A-1a-304.

D. "Centennial cluster" means two or more public schools in which the schools have a feeder school relationship, such as an elementary school that feeds into a middle, junior high or high school. At least one of the schools in the cluster shall be, or shall have been, an eligible centennial school which is in its third year or has completed its third year of funding. For funding purposes, individual schools within a cluster shall count separately. For selection purposes, a cluster shall be considered as one school.

E. "Utah Strategic Planning Act for Educational Excellence" means Sections 53A-1a-101 through 53A-1a-304, an act resulting from the "Utah State Public Education Strategic Plan" (Strategic Plan) a written plan for improving public education in Utah as adopted by the Utah Legislature in January, 1992. Copies of the Strategic Plan and the Strategic Planning Act are available in the Office of the State Superintendent of Public Instruction.

F. "School directors" means the group of individuals empowered by a school district delegation document to implement a centennial school program at a public elementary or secondary school. The school directors may, at the school's discretion, be the same group authorized as a community council under Section 53A-1a-108.

G. "Community council" means a decision-making body consisting of teachers, classified employees, the school principal or the principal's designee, parents or guardians of the applicant centennial school's students. This body functions at the school site to help develop and maintain the school characteristics identified in Section 53A-1a-104. For purposes of this program, "community council" is the same as "school directors."

H. "School delegation document" means a document adopted by the local board in consultation with local school directors under Sections 53A-1a-301 and 53A-1a-303.5(6) providing how modified centennial schools program funds shall be distributed.

R277-466-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53A-1-401(1)(b) which directs the Board to establish rules and minimum standards for school programs, and by Section 53A-1a-303.5 which provides for the designation of ten schools as "Modified Centennial Schools" by the Board.

B. The purpose of this rule is to clarify eligibility criteria, provide procedures for the selection of schools, and to specify the distribution of money to school districts for allocation to those schools designated as modified centennial schools based on a competitive application and selection process.

R277-466-3. Eligible Applicants.

A. All public schools that have completed three years or are in their third year as centennial schools are eligible applicants for selection under the modified centennial schools program as outlined in 53A-1a-303.5.

B. Noncentennial schools are eligible as part of a centennial cluster as defined.

R277-466-4. Application Process.

A. The USOE shall notify schools of the application process for modified centennial school designation and funding.

B. The USOE shall provide eligible schools with appropriate forms to complete the application process.

C. An eligible school shall complete a written, annual application and submit it to the USOE consistent with the deadlines established by the USOE.

D. The application shall include:

(1) assurances that all of the centennial school qualification requirements in Section 53A-1a-302 shall be maintained by eligible centennial schools, or established by noncentennial schools, during the first year of modified centennial school status.

(2) specific actions to be taken to bring the school directors/community council into compliance with the conditions set forth in the modified centennial school program, Section 53A-1a-303(4)(a) through (4)(g) including the following:

(a) The school directors shall consist of the school principal, an equal number of individuals employed at the school and parents or guardians of students attending the school who are not also employed at the school. The school directors may also appoint any additional non-voting community members as the board deems appropriate.

(b) Each employee director shall be elected by a majority vote of the employees at the school and shall serve a two-year term.

(c) Each parent or guardian director shall be elected at an election held at the school by a majority vote of those voting at the election and shall serve a two-year term. The election process and the distribution of ballots shall encourage broad community participation. This may include mailing ballots to homes of students within the school boundaries.

(d) Each parent or guardian of students attending the school may vote at the election held under Subsection (c) above.

(e) Written notice of the elections held under Subsections (b) and (c) above shall be given at least 30 days prior to the elections.

(f) Employee and parent/guardian directors may serve up to three successive terms.

(g) Initial terms shall be staggered so that no more than 50 percent of the directors stand for election in any one year.

(3) an outline of specific, measurable student performance goals and outlined annual evaluation criteria for these goals.

(4) a statement of requested waivers of local or state Board rules or policies allowed under and consistent with 53A-1a-303.5(5).

(5) an assurance regarding management of the monies consistent with 53A-1a-303.5(6)(a) through (c).

R277-466-5. Selection Process.

A. The USOE staff, in concert with other educational organizations, shall select an application review committee representative of major organizations within the education community including teachers, parents, administrators, and business partners.

B. The review committee shall read and review all applications for modified centennial school status and funding.

C. The review committee shall make recommendations to the Board relative to the designation and funding of up to ten modified centennial schools per year.

(1) Preference shall be given to those centennial schools that have completed three years of successful implementation.

(2) Preference shall be given to those applicant schools documenting significant and extensive parent/guardian and school staff support, as determined by the review committee.

(3) Preference shall be given to applicant schools providing evidence of prior and continuing commitment from the local school board toward school autonomy.

(4) Preference shall be given to schools in districts which demonstrate cooperation and flexibility in fiscal procedures consistent with the law, rules and the intent of the modified centennial schools appropriation.

(5) Preference shall be given to applicant schools clearly articulating attainable, measurable student performance goals. Applicant schools shall also identify instruments that will provide evidence of attainment of those goals.

D. The Board shall select the modified centennial schools following review of the committee's recommendations.

E. The USOE staff shall notify applicant schools of the decisions of the Board.

R277-466-6. Distribution of Modified Centennial Schools Funds.

A. Funds shall be distributed to schools through school districts consistent with Section 53A-1a-303(4)(b) through (d).

B. Under 53A-1a-303(4)(c), modified centennial school funding is nonlapsing so long as the school maintains the centennial school designation.

C. School districts shall receive centennial school funding monthly on behalf of qualifying schools.

D. School districts shall transfer approved funding directly to the designated schools consistent with 53A-1a-303.5(6)(a).

E. Centennial school funds shall supplement, not supplant, funds for specific and approved purposes.

F. Centennial school funds shall be monitored by the district consistent with district procurement and accounting policies.

R277-466-7. Miscellaneous Provisions.

A. Schools within centennial clusters may use their allocations jointly, consistent with purposes stated in their applications.

B. Modified centennial schools shall submit annual financial and narrative reports in the format and within the deadlines established by the USOE.

C. All actions of school directors shall be consistent with the provisions of the Utah Open and Public Meetings Act, Section 52-4-1 through 52-4-10.

D. The Board shall monitor schools receiving modified centennial school funding consistent with 53A-1a-303.5(7), law and Board rules.

KEY: public education, modified centennial schools*
September 4, 1996 **Art X Sec 3**
Notice of Continuation September 4, 2001 **53A-1-401(1)(b)**
53A-1a-301 through 53A-1a-304
53A-1a-101
53A-1a-108
53A-1a-303.5(7)

R277. Education, Administration.
R277-480. Advanced Readers at Risk.
R277-480-1. Definitions.

A. "Advanced readers at risk" are students in public school classrooms who read above grade level but who require differentiated reading strategies and activities to meet their needs in the regular classroom.

B. "Board" means the Utah State Board of Education.

C. "Reading Advisory Committee" means membership selected from statewide school district reading and gifted and talented specialists and others as determined by the USOE Reading and Gifted and Talented Specialists.

D. "USOE" means the Utah State Office of Education.

R277-480-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board, H.B. 216, 2001 Laws of Utah, Chapter 358 which appropriates funds to establish an advanced readers at risk program in the state's public schools, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish local programs for advanced readers at risk in Utah's public schools. The rule provides procedures for school districts or schools or consortia of districts or schools to receive funds to develop local programs that encourage advanced readers to develop and apply advanced reading skills, to train and involve parents in reading activities, and to promote student service projects that develop from the students' reading skills and activities.

R277-480-3. Distribution of Funds.

A. Districts or consortia shall submit applications for funding for this program to the USOE on applications provided by the USOE.

B. Projects shall be selected on a competitive basis to the extent of funds available. Criteria for funding include:

(1) submission of a completed application;

(2) commitment of model classrooms within the district(s);

(3) a plan for professional development for staff participating in the program;

(4) an explanation within the application of reading activities to promote advanced reading skills;

(5) a plan for parent involvement and training in reading strategies and activities to encourage students to read and to use their acquired reading skills;

(6) a plan/description of service projects to be implemented by students for their schools and communities; and

(7) an interim evaluation plan (available in December) and a final internal or external evaluation plan for the district/school program. The evaluation plans shall:

(a) detail how the funds were expended to date during the program period;

(b) identify any funds not expended to date;

(c) request to carry forward any program funds not expended or obligated to date during the approved program period with a plan for expenditure of remaining funds with USOE approval; and

(d) include results of the program to date and an outline of changes planned in response to evaluation information.

C. Consortia of districts or schools may submit applications for funding.

D. The Reading Advisory Committee and the USOE Reading and Gifted and Talented Specialists shall make recommendations for funding to the Associate Superintendent for Instructional Services.

E. Final decisions about project funding shall be made by the Associate Superintendent for Instructional Services.

R277-480-4. Funding Timeline.

A. The USOE shall provide introductory information to interested applicants by May 30.

B. Applications shall be available from the USOE by June 30 for the following school year.

C. Districts or schools shall be identified for funding by August 30.

D. Other deadlines for adequate staff training, parent education and student service projects shall be established in school or district applications.

E. Applications shall provide for periodic review by USOE staff or the Reading Advisory Committee; and

F. Applications shall identify an appropriate due date for project interim and final evaluations.

KEY: education, reading, students
September 20, 2001 **Art X Sec 3**
53A-1-401(3)

R307. Environmental Quality, Air Quality.

R307-110. General Requirements: State Implementation Plan.

R307-110-1. Incorporation by Reference.

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan must be incorporated by reference into these rules. Copies of the Utah State Implementation Plan are available at the Utah Department of Environmental Quality, Division of Air Quality.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on September 5, 2001, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on September 9, 1998, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. Section IX, Control Measures for Area and Point Sources, Part G, Fluoride.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part G, Fluoride, as most

recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Involvement.

The Utah State Implementation Plan, Section XII, Involvement, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Reserved.

Reserved.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on August 1, 2001, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on

August 1, 2001, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, small business assistance program*, particulate matter*, ozone
September 10, 2001 19-2-104(3)(e)
Notice of Continuation June 2, 1997

R307. Environmental Quality, Air Quality.
R307-223. Emission Standards: Existing Small Municipal Waste Combustion Units.
R307-223-1. Purpose and Applicability.

(1) R307-223 regulates emissions from existing small municipal waste combustion units. The purpose of R307-223 is to reduce the emissions of particulate matter, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and furans from small municipal waste combustion units. Reductions are required by 42 U.S.C. 7411(d) and 7429 and 40 CFR Part 60, subpart BBBB, published at 63 FR 76378, December 6, 2000, and by the Plan for Existing Small Municipal Waste Combustion Units that is incorporated by reference at R307-220-4.

(2) R307-223 applies to each existing small municipal waste combustion unit that has the capacity to combust at least 35 tons per day but no more than 250 tons per day of municipal solid waste or refuse-derived fuel and commenced construction on or before August 30, 1999. A list of facilities not subject to R307-223 is found in 40 CFR 60.1555(a) through (k), and is hereby adopted and incorporated by reference.

(3) If an owner or operator of a municipal waste combustion unit makes physical or operational changes to an existing municipal waste combustion unit primarily to comply with the Plan for Existing Small Municipal Waste Combustion Units that is incorporated by reference at R307-220-4, then R307-210 does not apply to that unit. Such changes do not constitute modifications or reconstructions under R307-210.

(4) The owner or operator of any source subject to R307-223 also is required to submit an application for an operating permit under R307-415 and must notify the executive secretary that the source is subject to CFR Part 60, Subpart BBBB no later than January 1, 2002.

R307-223-2. Definitions and Equations.

(1) The following definitions apply only to R307-223. Definitions found in 40 CFR 60.1940, effective February 5, 2001, and published at 65 FR 76378, are adopted and incorporated by reference, with the following substitutions.

(a) Substitute "executive secretary" for all federal regulation references to "Administrator" or "EPA Administrator."

(b) Substitute "State of Utah" for all federal regulation references to "State," "State agency" or "State regulatory agency."

(c) "State plan" means the Plan for Existing Small Municipal Waste Combustion Units that is incorporated by reference at R307-220-4.

(d) "You" means the owner or operator of a small municipal waste combustion unit.

(e) Substitute "Rule R307-223" for all references to "this subpart."

(f) Substitute "40 CFR Part 60" for all references to "this part."

(g) Substitute "40 CFR" for all references to "This title."

(2) Equations found in 40 CFR 60.1935, effective February 5, 2001, and published at 65 FR 76378, are adopted and incorporated by reference.

R307-223-3. Requirements.

(1) Each incinerator owner or operator subject to R307-223 must comply with the requirements of 40 CFR 60.1540 and 60.1585 through 60.1905, and with the requirements and schedules set forth in Tables 2 through 8 that are found following 40 CFR 60.1940 for operator training and certification, operating requirements, emission limits, continuous emission monitoring, stack testing, other monitoring requirements, record keeping, and reporting. These provisions and table are adopted and incorporated by reference with the exceptions listed below.

(a) In 40 CFR 60.1650(a), delete "or state."

(b) In 40 CFR 60.1675(a), delete "or a current provisional operator certification from your State certification program."

(c) In 40 CFR 1675 (c), change "three" to "two," and delete 40 CFR 1675(c)(3).

(2) Compliance dates. Each incinerator must be in compliance with the dates in Section III of the Plan.

KEY: air pollution, municipal waste incinerator*, waste to energy plant*
September 10, 2001 19-2-104

R307. Environmental Quality, Air Quality.
R307-301. Utah and Weber Counties: Oxygenated Gasoline Program.
R307-301-1. Definitions.

The following additional definitions apply to R307-301.

"Averaging period" is the control period and means the period of time over which all gasoline sold or dispensed for use in a control area by any control area responsible party or blender control area responsible party must comply with the average oxygen content standard.

"Blender control area responsible party (blender CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending installation.

"Blending Allowance" means the amount of oxygen a gasoline blend is allowed above its upper oxygen content limit. Any gasoline blended under the provisions of 42 U.S.C. 7545(f)(1) addressing substantially similar fuels are permitted a blending allowance of 0.2% oxygen by weight. Blending allowances are not given to gasoline blends granted a waiver by the Administrator under 42 U.S.C. 7545(f)(4).

"Carrier" means any person who transports, stores or causes the transportation or storage of gasoline at any point in the gasoline distribution network, without taking title to or otherwise having ownership of the gasoline, and without altering the quality or quantity of the gasoline.

"Control area" means a geographic area in which only gasoline under the oxygenated gasoline program may be sold or dispensed during the control period.

"Control area oxygenate blending installation" means any installation or truck at which oxygenate is added to gasoline or gasoline blendstock which is intended for use in any control area, and at which the quality or quantity of the gasoline or gasoline blendstock is not otherwise altered, except through the addition of deposit-control additives.

"Control area responsible party (CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area terminal.

"Control area terminal" means either a terminal which is capable of receiving gasoline in bulk, i.e., by pipeline, marine vessel or barge, or a terminal at which gasoline is altered either in quantity or quality, excluding the addition of deposit control additives, or both. Gasoline which is intended for use in any control area is sold or dispensed into trucks at these control area terminals.

"Control period" means November 1 through the last day of February, during which time only oxygenated gasoline may be sold and dispensed in any control area.

"Destination" means:

(1) for all control periods prior to the trigger date:

(a) the Provo-Orem Metropolitan Statistical Area (MSA), all of Utah County or

(b) anywhere except Utah County; and

(2) for all control periods subsequent to the trigger date:

(a) Utah County, the Provo-Orem Metropolitan Statistical Area,

(b) Weber County, or

(c) anywhere except Utah County and Weber County.

"Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refiner's installation and any retail outlet or wholesale purchaser-consumer's installation. A distributor is a blender CAR if the distributor alters the oxygen content of gasoline intended for use in any control area through the addition of one or more oxygenates, or lowers its oxygen content below the minimum oxygen content specified in R307-301-6.

"Gasoline" means any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

"Gasoline blendstock" means a hydrocarbon material which by itself does not meet specifications for finished gasoline, but which can be blended with other components, including oxygenates, to produce a blended gasoline fully meeting the American Society for Testing and Materials (ASTM) or state specifications.

"Non-oxygenated gasoline" means any gasoline which does not meet the definition of oxygenated gasoline.

"Oxygen content of gasoline blends" means percentage of oxygen by weight contained in a gasoline blend, based upon the percent by volume of each type of oxygenate contained in the gasoline blend, excluding denaturants and other non-oxygen-containing compounds. All measurements shall be adjusted to 60 degrees Fahrenheit.

"Oxygenate" means any substance, which when added to gasoline, increases the amount of oxygen in that gasoline blend. Lawful use of any combination of these substances requires that they be substantially similar as provided for under 42 U.S.C. 7545(f)(1), or be permitted under a waiver granted by the Administrator of the Environmental Protection Agency under the authority of 42 U.S.C. 7545(f)(4).

"Oxygenate blender" means a person who owns, leases, operates, controls, or supervises a control area oxygenate blending installation.

"Oxygenated gasoline" means any gasoline which contains at least 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, that was produced through the addition of one or more oxygenates to a gasoline and has been included in the oxygenated gasoline program accounting by a control area responsible party or blender control area responsible party and which is intended to be sold or dispensed for use in any control area. Notwithstanding the foregoing, if the Board determines that the requirement of 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, will prevent or interfere with attainment of the PM_{10} National Ambient Air Quality Standard and the State requests and is granted a waiver from the Administrator of the Environmental Protection Agency under 42 U.S.C. 7545, the waiver amount granted by the Administrator of the Environmental Protection Agency shall apply. Oxygenated gasoline containing lead is required to conform to the same waiver conditions or substantially similar ruling as unleaded gasoline as described in the definition of oxygenate.

"Refiner" means any person who owns, leases, operates, controls, or supervises a refinery which produces gasoline for use in a control area during the applicable control period.

"Refinery" means a plant at which gasoline is produced.

"Reseller" means any person who purchases gasoline and resells or transfers it to a retailer or a wholesale purchaser-

consumer.

"Retail outlet" means any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in motor vehicles.

"Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

"Terminal" means an installation at which gasoline is sold, or dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer installations.

"Trigger date" means the date on which is triggered the Contingency Action Level specified in Section IX.C.8.h of the state implementation plan.

"Wholesale purchaser-consumer" means any organization that:

(1) is an ultimate consumer of gasoline;

(2) purchases or obtains gasoline from a supplier for use in motor vehicles; and

(3) receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

"Working day" means Monday through Friday, excluding observed federal and Utah state holidays.

R307-301-2. Applicability and Control Period Start Dates.

(1) Unless waived under authority of 42 U.S.C. 7545(m)(3) by the Administrator of the Environmental Protection Agency, R307-301 is applicable in Utah and Weber Counties.

(2) The first control period for areas for which R307-301 is applicable begins:

(a) November 1, 1992, for the entire Provo-Orem Metropolitan Statistical Area which includes all of Utah County; and

(b) November 1 following the trigger date for Weber County.

R307-301-3. Average Oxygen Content Standard.

(1) All gasoline sold or dispensed during the control period, for use in each control area, by each CAR or blender CAR as defined in R307-301-1, shall be blended for each averaging period to contain an average oxygen content of not less than 2.7% oxygen by weight.

(2) The averaging period over which all gasoline sold or dispensed in the control area is to be averaged shall be equal to the control period.

(3) All gasoline, both leaded and unleaded, shall be blended in compliance with 40 CFR Part 79 (1991) - Registration of Fuels and Fuel Additives and 40 CFR Part 80 (1991) - Regulation of Fuels and Fuel Additives.

(4) Any gasoline blended under 42 U.S.C. 7545(f)(1) dealing with substantially similar fuels must be blended in compliance with the criteria specified in the substantially similar ruling. Any extra volume of oxygenate or oxygenates added to gasoline blended under a substantially similar ruling as provided for under 42 U.S.C. 7545(f)(1) in excess of the criteria specified in 42 U.S.C. 7545(f)(1) may not be included in the compliance calculations specified in R307-301-5(2) and (3).

(5) Any gasoline blended under a waiver granted by the Environmental Protection Agency under the provisions of 42 U.S.C. 7545(f)(4) must be blended in compliance with the criteria specified in the appropriate waiver. Gasoline blends waived to oxygen content above 2.7% oxygen by weight are not permitted a blending allowance for blending tolerance purposes. Any extra volume of oxygenate in excess of the criteria specified in the appropriate waiver may not be included in the compliance calculations specified in R307-301-5(2) or (3).

(6) Oxygen content shall be determined in accordance with R307-301-4.

R307-301-4. Sampling, Testing, and Oxygen Content Calculations.

(1) For the purpose of determining compliance with the requirements of R307-301, the oxygen content of gasoline shall be determined by one or both of the two following methods.

(a) Volumetric Method. Oxygen content may be calculated by the volumetric method specified in the Environmental Protection Agency Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended - Supplementary Information - Oxygen Content Conversions, published in the Federal Register on October 20, 1992.

(b) Chemical Analysis Method.

(i) Use the sampling methodologies detailed in 40 CFR Part 80 (1993), Appendix D, to obtain a representative sample of the gasoline to be tested;

(ii) Determine the oxygenate content of the sample by use of:

(A) the test method specified in ASTM Designation D4815-93, Testing Procedures--Method--ASTM Standard Test Method for Determination of C1 to C4 Alcohols and MTBE in Gasoline by Gas Chromatography,

(B) the test method specified in Appendix C of Environmental Protection Agency Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended - Test Procedure Test for the Determination of Oxygenates in Gasoline as published in the Federal Register on October 20, 1992, or

(C) an alternative test method approved by the executive secretary.

(iii). Calculate the oxygen content of the gasoline sampled by multiplying the mass concentration of each oxygenate in the gasoline sampled by the oxygen molecular weight contribution of the oxygenate set forth in (3) below.

(2) All volume measurements required in R307-301-4 shall be adjusted to 60 degrees Fahrenheit.

(3) For the purposes of R307-301, the oxygen molecular weight contributions and specific gravities of oxygenates currently approved for use in the United States by the U.S. Environmental Protection Agency are the following:

TABLE

Specific Gravity and Weight Percent Oxygen of Common Oxygenates

oxygenate	weight fraction oxygen	specific gravity at 60 degrees F
ethyl alcohol	0.3473	0.7939
normal propyl alcohol	0.2662	0.8080
isopropyl alcohol	0.2662	0.7899
normal butyl alcohol	0.2158	0.8137
isobutyl alcohol	0.2158	0.8058
secondary butyl alcohol	0.2158	0.8114

tertiary butyl alcohol	0.2158	0.7922
methyl tertiary-butyl ether (MTBE)	0.1815	0.7460
tertiary amyl methyl ether (TAME)	0.1566	0.7752
ethyl tertiary-butyl ether (ETBE)	0.1566	0.7452

(4) Sampling, testing, and oxygen content calculation records shall be maintained for not less than two years after the end of each control period for which the information is required.

(5) Every refiner must determine the oxygen content of all gasoline produced for use in a control area by use of the methodology specified in (1) above. Documentation shall include the percent oxygen by weight, each type of oxygenate, the purity of each oxygenate, and the percent oxygenate by volume for each oxygenate. If a CAR or blender CAR alters the oxygen content of a gasoline intended for use within a control area during a control period, the CAR or blender CAR must determine the oxygen content of the gasoline by use of the methodology specified in (1) above.

R307-301-5. Alternative Compliance Options.

(1) Each CAR or blender CAR shall comply with the standard specified in R307-301-3 by means of the method set forth in either (2) or (3) below and shall specify which option will be used at the time of the registration required under R307-301-7.

(2) Compliance calculation on average basis.

(a) The CAR or blender CAR shall determine compliance with the standard specified in R307-301-3 for each averaging period and for each control area by:

(i) Calculating the total volume of gasoline labeled as oxygenated that is sold or dispensed, not including volume dispensed or sold to another CAR or blender CAR, for use in the control area which is the sum of:

(A) the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed;

(B) minus the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed for use in a different control area;

(C) minus the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed for use in any non-control area.

(ii) Calculating the required total oxygen credit units. Multiply the total volume in gallons of gasoline labeled as oxygenated that is sold or dispensed for use in the control area, as determined by (i) above, by the oxygen content standard specified in R307-301-3(1).

(iii) Calculating the actual total oxygen credit units generated. The actual total oxygen credit units generated is the sum of the volume of each batch or truckload of gasoline labeled as oxygenated that was sold or dispensed for use in the control area as determined by (i) above, multiplied by the actual oxygen content by weight percent associated with each batch or truckload. If a batch or truckload of gasoline is blended under the substantially similar provisions of 42 U.S.C. 7545(f)(1) or under a waiver granted by the Environmental Protection Agency under the provisions of 42 U.S.C. 7545(f)(4), any extra volume of oxygenate in excess of the substantially similar criteria including the blending tolerance of 0.2% oxygen by weight, or in excess of the appropriate waiver, cannot be included in the calculation of oxygen credit units.

(iv) Calculating the adjusted actual total oxygen credit units. The adjusted actual total oxygen content units is the sum of the actual total oxygen credit units generated, as determined by (iii) above;

(A) plus the total oxygen credit units purchased, acquired through trade and received; and

(B) minus the total oxygen credit units sold,given away and provided through trade.

(v) Comparing the adjusted actual total oxygen credit units with the required total oxygen credit units. If the adjusted actual total content oxygen credit units is greater than or equal to the required total oxygen credit units, then the standard in R307-301-3 is met. If the adjusted actual total oxygen credit units is less than the required total oxygen credit units, then the purchase of oxygen credit units is required in order to achieve compliance.

(vi) In transferring oxygen credit units, the transferor shall provide the transferee with information as to how the credits were calculated, including the volume and oxygen content by weight percent of the gasoline associated with the credits.

(b) To determine the oxygen credit units associated with each batch or truck load of oxygenated gasoline sold or dispensed into the control area, use the running weighted oxygen content (RWOC) of the tank from which and at the time the batch or truckload was received (see (c) below). In the case of batches or truckloads of gasoline to which oxygenate was added outside of the terminal storage tank from which it was received, use the weighted average of the RWOC and the oxygen content added as a result of the volume of the additional oxygenate added.

(c) Running weighted oxygen content. The RWOC accounts for the volume and oxygen content of all gasoline, including transfers to or from another CAR or blender CAR, which enters or leaves a terminal storage tank, and the oxygen contribution of all oxygenates which are added to the tank. The RWOC must be calculated each time gasoline enters or leaves the tank or whenever oxygenates are added to the tank. The RWOC is calculated weighing the following:

(i) the volume and oxygen content by weight percent of the gasoline in the storage tank at the beginning of the averaging period;

(ii) the volume and oxygen content by weight percent of gasoline entering the storage tank;

(iii) the volume and oxygen content by weight percent of gasoline leaving the storage tank; and

(iv) the volume, type, purity and oxygen content by weight percent of the oxygenates added to the storage tank.

(d) Credit transfers. Credits may be used in the compliance calculation in (2)(a)(i) above, provided that:

(i) the credits are generated in the same control area as they are used, i.e., no credits may be transferred between nonattainment areas;

(ii) the credits are generated in the same averaging period as they are used;

(iii) the ownership of credits is transferred only between CARs or blender CARs registered under the averaging compliance option specified in R307-301-7;

(iv) the credit transfer agreement is made no later than 30 working days, as defined in R307-301-1, after the final day of

the averaging period in which the credits are generated; and

(v) the credits are properly created.

(e) Improperly created credits.

(i) No party may transfer any credits to the extent such a transfer would result in the transferor having a negative credit balance at the conclusion of the averaging period for which the credits were transferred. Any credits transferred in violation of this paragraph are improperly created credits.

(ii) Improperly created credits may not be used, regardless of a credit transferee's good faith belief that the transferee was receiving valid credits.

(3) Compliance calculation on a per gallon basis. Each gallon of gasoline sold or dispensed by a CAR or blender CAR for use within each control area during the averaging period as defined in R307-301-1 shall have an oxygen content of at least the average oxygen content standard specified in R307-301-3(1). The maximum oxygen content which may be used to calculate compliance is the average oxygen content standard specified in R307-301-3. In addition, the CAR or blender CAR is prohibited from selling, trading or providing oxygen credits based on gasoline for which compliance is calculated under this alternative per-gallon method.

R307-301-6. Minimum Oxygen Content.

(1) Any gasoline which is sold or dispensed by a CAR, blender CAR, carrier, distributor, or reseller for use within a control area, as defined in R307-301-1, during the control period, shall contain not less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, unless it is sold or dispensed to another registered CAR or blender CAR. This requirement shall begin five working days, as defined in R307-301-1, before the applicable control period and shall apply until the end of that period.

(2) This requirement shall apply to all parties downstream of the CAR or blender CAR unless the gasoline will be sold or dispensed to another CAR or blender CAR. Any gasoline which is offered for sale, sold or dispensed to an ultimate consumer within a control area during a control period, as defined in R307-301-1, shall not contain less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%. This requirement shall apply during the entire applicable control period.

(3) Every refiner must determine the oxygen content of all gasoline produced by use of the methodologies described in R307-301-4. This determination shall include the oxygen content by weight percent, each type of oxygenate, and percent oxygenate by volume for each type of oxygenate.

(4) Any gasoline sold or dispensed by a CAR or blender CAR for use within a control area and for which compliance is demonstrated using the method specified in (3) shall contain not less than the average oxygen content standard specified in R307-301-3(1), unless the gasoline is sold or dispensed to another registered CAR or blender CAR.

R307-301-7. Registration.

(1) All persons who sell or dispense gasoline directly or indirectly to persons who sell or dispense to ultimate consumers in a control area during a control period, including CARs, blender CARs, carriers, resellers, and distributors, shall petition the executive secretary for registration not less than one calendar month in advance of such sales or transfers of gasoline into the control area during the control period.

(2) This petition for registration shall be on forms prescribed by the executive secretary and shall include the following information:

(a) the name and business address of the CAR, blender CAR, carrier, reseller, or distributor;

(b) in the case of a CAR, the address and physical location of each of the control area terminals from which the CAR operates;

(c) in the case of a blender CAR, the address and physical location of each control area oxygenate blending installation which is owned, leased, operated, or controlled, or supervised by a blender CAR;

(d) in the case of a carrier, distributor, or reseller, the names and addresses of retailers they supply;

(e) the address and physical location where documents which are required to be retained by R307-301 shall be kept; and

(f) in the case of a CAR or blender CAR, the compliance option chosen under provisions of R307-301-5 and a list of oxygenates which will be used.

(3) If the registration information previously supplied by a registered party under the provisions of (2)(a) through (e) becomes incomplete or inaccurate, that party shall submit updated registration information to the executive secretary within 15 working days as defined in R307-301-1. If the information required under (2)(f) is to change, the updated registration information must be submitted to the executive secretary before the change is made.

(4) No person shall participate in the oxygenated gasoline program as a CAR, blender CAR, carrier, reseller, or distributor until such person has been notified by the executive secretary that such person has been registered as a CAR, blender CAR, carrier, reseller, or distributor. Registration shall be valid for the time period specified by the executive secretary. The executive secretary shall issue each CAR, blender CAR, carrier, reseller, or distributor a unique identification number within one calendar month of the petition for registration.

R307-301-8. Recordkeeping.

(1) Records. All parties in the gasoline distribution network, as described below, shall maintain records containing compliance information enumerated or described below. These records shall be retained by the regulated parties for a period of two years after the end of each control period for which the information is required.

(a) Refiners. Refiners shall, for each separate quantity of gasoline produced or imported for use in a control area during a control period, maintain records containing the following information:

(i) results of the tests utilized to determine the types of oxygenates and percent by volume;

(ii) percent oxygenate content by volume of each oxygenate;

(iii) oxygen content by weight percent;

(iv) purity of each oxygenate;

(v) total volume of gasoline; and

(vi) the name and address of the party to whom each separate quantity of oxygenated gasoline was sold or transferred.

(b) Control area terminal operators. Persons who own, lease, operate or control gasoline terminals which serve control areas, or any truck- or terminal-lessee who subleases any portion of a leased tank or terminal to other persons, shall maintain a copy of the transfer document for each batch or truckload of gasoline received, purchased, sold or dispensed, and shall maintain records containing the following information:

(i) the owner of each batch of gasoline handled by each regulated installation if known, or the storage customer of record;

(ii) volume of each batch or truckload of gasoline going into or out of the terminal;

(iii) for all batches or truckloads of gasoline leaving the terminal, the RWOC of the batch or truckload;

(iv) for each oxygenate, the type of oxygenate, purity if available, and percent oxygenate by volume;

(v) oxygen content by weight percent of all batches or truckloads received at the terminal;

(vi) destination, as defined in R307-301-1, of each tank truck sale or batch of gasoline as declared by the purchaser of the gasoline;

(vii) the name and address of the party to whom the gasoline was sold or transferred and the date of the sale or transfer, and

(viii) the results of the tests for oxygenates, if performed, of each sale or transfer, and who performed the tests.

(c) CARs and blender CARs. Each CAR must maintain records containing the information listed in (b) above. Each CAR and blender CAR must maintain a copy of the transfer document for each shipment of gasoline received, purchased, sold or dispensed, as well as the records containing the following information:

(i) CAR or blender CAR identification number;

(ii) the name and address of the person from whom each shipment of gasoline was received, and the date when it was received;

(iii) data on each shipment of gasoline received, including:

(A) the volume of each shipment;

(B) type of oxygenate or oxygenates, and percentage by volume; and

(C) oxygen content by weight percent;

(iv) the volume of each receipt of bulk oxygenates;

(v) the name and address of the parties from whom bulk oxygenate was received;

(vi) the date and destination, as defined in R307-301-1, of each sale of gasoline;

(vii) data on each shipment of gasoline sold or dispensed including:

(A) the volume of each shipment;

(B) type of each oxygenate, and percent by volume for each oxygenate, and

(C) oxygen content by weight percent;

(viii) documentation of the results of all tests done regarding the oxygen content of gasoline;

(ix) the names, addresses and CAR or blender CAR identification numbers of the parties to whom any gasoline was sold or dispensed, and the dates of these transactions; and

(x) in the case of CARs or blender CARs that elect to comply with the average oxygen content standard specified in R307-301-3 by means of the compliance option specified in R307-301-5(2) must also maintain records containing the following information:

(A) records supporting and demonstrating compliance with the averaging standard specified in R307-301-3; and

(B) for any credits bought, sold, traded, or transferred, the dates of the transactions, the names, addresses and CAR or blender CAR identification numbers of the CARs and blender CARs involved in the individual transactions, and the amount of credits transferred. Any credits transferred must be accompanied by a demonstration of how those credits were calculated. Adequate documentation that both parties have agreed to all credit transfers within 30 working days, as defined in R307-301-1, following the close of the averaging period must be included.

(d) Retailers and wholesale purchaser-consumers within a control area must maintain the following records:

(i) the names, addresses and CAR, blender CAR, carrier, distributor, or reseller identification numbers of the parties from whom all shipments of gasoline were purchased or received, and the dates when they were received and for each shipment of gasoline bought, sold or transported:

(A) the transfer document as specified in R307-301-8(3) and

(B) a copy of each contract for delivery of oxygenated gasoline and

(ii) data on every shipment of gasoline bought, sold or transported, including:

(A) volume of each shipment;

(B) for each oxygenate, the type, percent by volume and purity (if available);

(C) oxygen content by weight percent; and

(D) destination, as defined in R307-301-1, of each sale or shipment of gasoline; and

(iii) the name and telephone number of the person responsible for maintaining the records and the address where the records are located, if the location of the records is different from the station or outlet location.

(e) Carriers, distributors, resellers, terminal operators, and oxygenate blenders must keep a copy of the transfer document for each truckload or shipment of gasoline received, obtained, purchased, sold or dispensed.

R307-301-9. Reports.

(1) Each CAR or blender CAR that elects to comply with the average oxygen content standard specified in R307-301-3 by the compliance option specified in R307-301-5(2) shall submit a report to the executive secretary for each control period for each control area as defined in R307-301-1 reflecting the compliance information detailed in R307-301-5(2).

(2) Each CAR or blender CAR that elects to comply with the average oxygen content standard specified in R307-301-3 shall submit a report to the executive secretary for each control period for each control area as defined in R307-301-1 reflecting the compliance information detailed in R307-301-5(3), including the volume of oxygenated gasoline sold or dispensed into each control area during the control period.

(3) The report is due 30 working days, as defined in R307-301-1, after the last day of the control period for which the information is required. The report shall be filed using forms provided by the executive secretary.

R307-301-10. Transfer Documents.

Each time that physical custody or title of gasoline destined for a control area changes hands other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer installation, the transferor shall provide to the transferee, in addition to, or as part of, normal bills of lading, invoices, etc., a document containing information regarding that shipment. This document shall accompany every shipment of gasoline to a control area after it has been dispensed by a terminal, or the information shall be included in the normal paperwork which accompanies every shipment of gasoline. The information shall legibly and conspicuously contain the following information:

(1) the date of the transfer;

(2) the name, address, and CAR, blender CAR, carrier, distributor, or reseller identification number, if applicable, of the transferor;

(3) the name, address, and CAR, blender CAR, carrier, distributor, or reseller identification number, if applicable, of the transferee;

(4) the volume of gasoline which is being transferred;

(5) identification of the gasoline as oxygenated or, if non-oxygenated, with a statement labeling it as "Non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period";

(6) the location of the gasoline at the time of the transfer;

(7) type of each oxygenate and percentage by volume for each oxygenate;

(8) oxygen content by weight percent; and

(9) for gasoline which is in the gasoline distribution network between the refinery or import installation and the control area terminal, for each oxygenate used, the type of oxygenate, its purity and percentage by volume and the oxygen content by weight percent.

R307-301-11. Prohibited Activities.

(1) During the control period, no refiner, oxygenate blender, CAR, blender CAR, control area terminal operator, carrier, distributor or reseller may manufacturer, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transport of:

(a) gasoline which contains less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% oxygen, for use during the control period, in a control area unless clearly marked documents accompany the gasoline labeling it as "Non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period"; or

(b) gasoline represented as oxygenated which has an oxygen content which is improperly stated in the documents which accompany such gasoline.

(2) No retailer or wholesale purchaser-consumer may dispense, offer for sale, sell or store, for use during the control period, gasoline which contains less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% in a control area.

(3) No person may operate as a CAR or blender CAR or hold themselves out as such unless they have been properly registered by the executive secretary. No CAR or blender CAR may offer for sale or store, sell, or dispense gasoline, to any person not registered as a CAR or blender CAR for use in a control area, unless:

(a) the average oxygen content of the gasoline during the averaging period meets the standard established in R307-301-3; and

(b) the gasoline contains at least 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% on a per-gallon basis.

(4) For terminals which sell or dispense gasoline intended for use in a control area during a control period, the terminal owner or operator may not accept gasoline into the terminal unless:

(a) transfer documentation containing the information specified in R307-301-8(3) accompanies the gasoline and

(b) the terminal owner or operator conducts a quality assurance program to verify the accuracy of this information.

(5) No person may sell or dispense non-oxygenated gasoline for use in any control area during the control period, unless:

(a) the non-oxygenated gasoline is segregated from oxygenated gasoline;

(b) clearly marked documents accompany the non-oxygenated gasoline labeling it as "non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period," and

(c) the non-oxygenated gasoline is in fact not sold or dispensed to ultimate consumers during the control period in the control area.

(6) No named person may fail to comply with the recordkeeping and reporting requirements contained in R307-301-8 through 10.

(7) No person may sell, dispense or transfer oxygenated gasoline, except for use by the ultimate consumer at a retail outlet or wholesale purchaser-consumer installation, without transfer documents which accurately contain the information required by R307-301-10).

(8) Liability for violations of the prohibited activities.

(a) Where the gasoline contained in any storage tank at any installation owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender is found in violation of the prohibitions described in (1)(a) or (2) above, the following persons shall be in violation:

(i) the retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender who owns, leases, operates, controls or supervises the installation where the violation is found; and

(ii) each oxygenate blender, distributor, reseller, and carrier who, downstream of the control area terminal, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

(b) Where the gasoline contained in any storage tank at

any installation owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender is found in violation of the prohibitions described in (1)(b) or (2) above, the following persons shall be in violation:

(i) the retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender who owns, leases, operates, controls or supervises the installation where the violation is found; and

(ii) each refiner, oxygenate blender, distributor, reseller, and carrier who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

(9) Defenses for prohibited activities.

(a) In any case in which a refiner, oxygenate blender, distributor, reseller or carrier would be in violation under (1) above, that person shall not be in violation if they can demonstrate that they meet all of the following:

(i) that the violation was not caused by the regulated party or its employee or agent;

(ii) that refiner, oxygenate blender, distributor, reseller or carrier possesses documents which should accompany the gasoline, which contain the information required by R307-301-8; and

(iii) that refiner, oxygenate blender, distributor, reseller or carrier conducts a quality assurance sampling and testing program as described in (10) below.

(b) In any case in which a retailer or wholesale purchaser-consumer would be in violation under (2) above, the retailer or wholesale purchaser-consumer shall not be in violation if it can demonstrate that they meet all of the following:

(i) that the violation was not caused by the regulated party or its employee or agent; and

(ii) that the retailer or wholesale purchaser-consumer possess documents which should accompany the gasoline, which contain the information required by R307-301-8 through 10.

(c) Where a violation is found at an installation which is operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by (a) above, that the violation was caused by any of the following:

(i) an act in violation of law (other than the Clean Air Act or R307-301), or an act of sabotage or vandalism, or

(ii) the action of a reseller, distributor, oxygenate blender, carrier, or a retailer, or wholesale purchaser-consumer which is supplied by any of the persons listed in (a) above, in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite periodic sampling and testing by the refiner to ensure compliance with such contractual obligation; or

(iii) the action of any carrier or other distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, despite specification or inspection of procedures and equipment by the refiner or periodic sampling and testing which are reasonably calculated to prevent such action.

(d) In R307-301-8 through 11, the term "was caused" means that the party must demonstrate by specific showings or by direct evidence, that the violation was caused or must have been caused by another.

(10) Quality Assurance Program. In order to demonstrate an acceptable quality assurance program, a party must conduct periodic sampling and testing to determine if the oxygenated gasoline has oxygen content which is consistent with the product transfer documentation.

R307-301-12. Labeling of Pumps.

(1) Any person selling or dispensing oxygenated gasoline pursuant to R307-301 is required to label the fuel dispensing system with one of the following notices.

(a) "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This fuel contains up to (specify maximum percent by volume) (specific oxygenate or specific combination of oxygenates in concentrations of at least one percent)."

(b) "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This fuel contains up to (specify maximum percent by volume) (specific oxygenate or combination of oxygenates present in concentrations of at least one percent) from November 1 through February 29."

(2) The label letters shall be block letters of no less than 20-point type, at least 1/16 inch stroke (width of type), and of a color that contrasts with the label background color. The label letters that specify maximum percent oxygenate by volume and that disclose the specific oxygenate shall be at least 1/2 inch in height, 1/16 inch stroke (width of type).

(3) The label must be affixed to the upper one-half of the vertical surface of the pump on each side with gallonage and dollar amount meters from which gasoline can be dispensed and must be clearly readable to the public.

(4) The retailer or wholesale purchaser-consumer shall be responsible for compliance with R307-301-12.

R307-301-13. Inspections.

Inspections of registered parties, control area retailers, refineries, control area terminals, oxygenate blenders and control area wholesale purchaser-consumers may include the following:

(1) physical sampling, testing, and calculation of oxygen content of the gasoline as specified in R307-301-4;

(2) review of documentation relating to the oxygenated gasoline program, including but not limited to records specified in R307-301-8; and

(3) in the case of control area retailers and wholesale purchaser-consumers, verification that gasoline dispensing pumps are labeled in accordance with R307-301-12.

R307-301-14. Public and Industry Education Program.

The executive secretary shall provide to the affected public, mechanics, and industry information regarding the benefits of the program and other issues related to oxygenated gasoline.

KEY: air pollution control, motor vehicles, gasoline, petroleum

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R309. Environmental Quality, Drinking Water.

R309-101. General Administration of Drinking Water Program.

R309-101-1. Coverage.

These rules shall apply to all public drinking water systems within the State of Utah.

A public drinking water system is a system, either publicly or privately owned, providing water for human consumption and other domestic uses, which:

a. Has at least 15 service connections, or

b. Serves an average of at least 25 individuals daily at least 60 days out of the year.

Such term includes collection, treatment, storage and distribution facilities under control of the operator and used primarily in connection with the system. Additionally, the term includes collection, pretreatment or storage facilities used primarily in connection with the system but not under such control.

1.1 Categories of Public Drinking Water Systems

Public drinking water systems are divided into three categories, as follows:

a. "Community water system" means a public drinking water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

b. "Non-transient, non-community system" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year.

c. "Non-community water system" means a public drinking water system that is not a community water system or a non-transient, non-community water system.

The distinctions between "Community", "Non-transient, non-community", and Non-community water systems are important with respect to monitoring and water quality requirements.

1.2 Responsibility

All public drinking water systems must have a person or organization designated as the owner of the system. The name, address and phone number of this person or organization shall be supplied, in writing, to the Board.

The name of the person to be contacted on issues concerning the operation and maintenance of the system shall also be provided, in writing, to the Board.

R309-101-2. Approval of Plans and Specifications for Public Water Supply Projects.

The Executive Secretary must approve, in writing, all engineering plans and specifications for public drinking water projects prior to construction.

Refer to R309-102-2 for further requirements.

R309-101-3. Feasibility Reviews.

Upon the request of the local health department, the Department of Environmental Quality will conduct a review to determine the "feasibility" of adequate water supply for any proposed public water system (e.g. subdivisions, industrial plants or commercial facilities). Information submitted to the Department for consideration must be simultaneously submitted to the local health department. This feasibility review is a preliminary investigation of the proposed method of water supply and is done in conjunction with a review of proposed methods of wastewater disposal.

Refer to the Department of Environmental Quality publication "Review Criteria for Establishing the Feasibility of Proposed Housing Subdivisions" available at the Division of Drinking Water.

R309-101-4. Sanitary Survey and Evaluation of Existing Facilities.

The Executive Secretary, after considering information gathered during sanitary surveys and facility evaluations, may make determinations of regulatory significance including: monitoring reductions or increases, treatment, variances and exemptions.

4.1 CONDUCTING SANITARY SURVEYS

The Executive Secretary shall ensure a sanitary survey is conducted at least every five years on all public water systems except non-community water systems that use only protected and disinfected ground water. The Executive Secretary shall ensure a sanitary survey is conducted at least every ten years on all non-community water systems that use only disinfected ground water from protected ground water zones as designated under R309-106. The Executive Secretary shall conduct an initial sanitary survey by June 29, 1994, on community water systems that do not collect five or more routine bacteriologic samples per month and by June 29, 1999, on non-transient non-community and non-community water systems.

Sanitary surveys conducted by the following individuals under the circumstances as listed, may be used by the Executive Secretary for the above determinations:

a. Division of Drinking Water personnel;

b. Utah Department of Environmental Quality District Engineers;

c. local health officials;

d. Forest Service engineers;

e. Utah Rural Water Association staff;

f. consulting engineers; and

g. other qualified individuals authorized in writing by the Executive Secretary.

4.2 CONDITIONS ON CONDUCT OF SANITARY SURVEYS

In order for the groups of individuals listed in R309-101-4.1 to conduct sanitary surveys acceptable for consideration by the Executive Secretary, the following criteria must be met:

a) Surveys of all systems involving complete treatment plants must be performed by Division of Drinking Water staff or others authorized in writing by the Executive Secretary;

b) Local Health officials may conduct surveys of systems within their respective jurisdictions;

c) U.S. Forest Service (USFS) engineers may conduct surveys of water systems if the system is owned and operated by the USFS or USFS concessionaires;

d) Utah Rural Water Association staff may conduct surveys of water systems if the system's population is less than 10,000;

e) Consulting Engineers under the direction of a Registered Professional Engineer;

f) Other qualified individuals who are authorized in writing by the Executive Secretary may conduct surveys.

4.3 SANITARY SURVEY REPORT CONTENT

The Executive Secretary will prescribe the form and content of sanitary survey reports and be empowered to reject all or part of unacceptable reports.

4.4 ACCESS TO WATER FACILITIES

Department of Environmental Quality employees after reasonable notice and presentation of credentials, may enter any part of a public water system at reasonable times to inspect the facilities and water quality records, conduct sanitary surveys, take samples and otherwise evaluate compliance with Utah's drinking water rules. All others who have been authorized by the Executive Secretary to conduct sanitary surveys must have the permission of the water system owner or designated representative before a sanitary survey may be conducted.

Refer to R309-101-5 and R309-102-3 for further requirements.

R309-101-5. Rating System.

The Executive Secretary shall assign a rating to each public water supply in order to provide a concise indication of its condition and performance. The criteria to be used for determining a water system's rating shall be as set forth in R309-150.

R309-101-6. Orders and Emergency Actions.

In situations in which a public water system fails to meet the requirements of these regulations, the Board or the Executive Secretary shall issue an "Order" to a water supplier to take appropriate protective or corrective measures. Failure to take the required measures may result in the imposition of penalties as provided in the Utah Safe Drinking Water Act. Appeal procedures from administrative orders are outlined in the Utah Safe Drinking Water Act.

The Executive Secretary may also respond to emergency situations involving public drinking water in a manner deemed appropriate to protect the public health. Such emergency situations shall include those described in R309-102-10. The Executive Secretary's response may include the following:

1. Issuing press releases to inform the public of any confirmed or possible hazards in their drinking water.

2. Ordering water suppliers to take appropriate measures to protect public health.

R309-101-7. Variances.

Variances to the requirements of R309-103 of these rules may be granted by the Board to water systems which, because of characteristics of their raw water sources, cannot meet the required maximum contaminant levels despite the application of best technology and treatment techniques available (taking costs into consideration).

The variance will be granted only if doing so will not result in an unreasonable risk to health.

No variance from the maximum contaminant level for total coliforms are permitted.

No variance from the minimum filtration and disinfection requirements of R309-107 and R309-108 will be permitted for sources classified by the Executive Secretary as directly influenced by surface water.

Within one year of the date any variance is granted, the Board shall prescribe a schedule by which the water system will come into compliance with the maximum contaminant level in question. The requirements of Section 1415 of the Federal Safe Drinking Water Act, PL 99-339, are hereby incorporated by reference. The Board shall provide notice and opportunity for public hearing prior to granting any variance or determining the compliance schedule. Procedures for giving notice and opportunity for hearing will be as outlined in 40 CFR Section 142.44.

R309-101-8. Exemptions.

The Board may grant an exemption from the requirements of R309-103 or from any required treatment technique if:

1. Due to compelling factors (which may include economic factors), the public water system is unable to comply with contaminant level or treatment technique requirements, and

2. The public water system was in operation on the effective date of such contaminant level or treatment technique requirement, and

3. The granting of the exemption will not result in an unreasonable risk to health.

4. No exemptions from the maximum contaminant level for total coliforms are permitted.

5. No exemptions from the minimum disinfection requirements of R309-103-2.6 will be permitted for sources classified by the Executive Secretary as directly influenced by surface water.

Within one year of the granting of an exemption, the Board shall prescribe a schedule by which the water system will come into compliance with contaminant level or treatment technique requirement. The requirements of Section 1416 of the Federal Safe Drinking Water Act, PL 99-339, are hereby incorporated by reference.

The Board shall provide notice and opportunity for an exemption hearing as provided in 40 CFR Section 142.54.

R309-101-9. Definitions.

The following definitions apply to this section:

Approval - Unless indicated otherwise, shall be taken to mean a written statement of acceptance.

Board - means the Drinking Water Board.

Executive Secretary - means the Executive Secretary of the Drinking Water Board.

Must - means that a particular action is obliged and has to be accomplished.

Service Connection - The means by which a dwelling, commercial or industrial establishment, or other water user obtains water from the supplier's distribution system. Multiple dwelling units such as condominiums or apartments, shall be considered to have a single service connection if fed by a single line.

Shall - means that a particular action is obliged and has to be accomplished.

Should - means that a particular action is recommended but does not have to be accomplished.

Water Supplier - means a person who owns or operates a public water system.

9.1 The following proceedings and actions are designated to be conducted either formally or informally as required by Utah Code Annotated Section 63-46b-4:

(a) Approval of plans shall be by informal procedures outlined in R309-102 of the Utah Public Drinking Water Rules. Appeals of plan approvals, denials or conditions in an approval shall be conducted formally.

(b) Notices of Violations and Orders are exempt under Utah Code Annotated Section 63-46b-1(k). Appeals to the Board of notices of violations and orders shall be conducted formally.

(c) Variances and exemptions shall be by informal procedures as outlined in R309-101-7 and R309-101-8 of the Utah Public Drinking Water Rules. Any person denied a variance or exemption may request a formal hearing before the Board.

(d) Operator certification shall be handled informally as outlined in the certification regulations of the Board. Appeals to the Board of a denial of certification shall be processed formally.

(e) Funding applications, insofar as they are covered by Utah Code Annotated Section 63-46b-1, shall be processed informally in accordance with the procedures in the Board's rules, policies, and guidelines.

(f) Any other approvals, or authorizations shall be processed informally in accordance with the procedures in the Board's rules.

9.2 At any time before a final order is issued, the Board or appointed hearing officer may convert proceedings which are designated to be informal to formal, and proceedings which are designated as formal to informal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

9.3 Rules for conducting formal proceedings shall be as provided in Utah Code Annotated Sections 63-46b-3, and 6 through 13. In addition to the procedures referenced in paragraph 9.1 above, the procedures in Utah Code Annotated Section 63-46b-3 and 5 apply to informal proceedings.

9.4 Declaratory Orders. In accordance with the provisions of Utah Code Annotated Section 63-46b-21, any person may file a request for a declaratory order. The request shall be titled a petition for declaratory order and shall specifically identify the issues requested to be the subject of the order. Requests for declaratory order, if set for adjudicative hearing, will be processed informally using the procedures identified in Utah Code Annotated Section 63-46b-3 and 63-46b-5 unless converted to a formal proceeding under paragraph 9.2 above. No declaratory orders will be issued in the circumstances described in Utah Code Annotated Section 63-46b-21. Intervention rights and other procedures governing declaratory orders are outlined in Utah Code Annotated Section 63-46b-21.

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R309. Environmental Quality, Drinking Water.
R309-102. Responsibilities of Public Water System Owners and Operators.
R309-102-1. General.

Water suppliers are responsible for the quality of water delivered to their customers. In order to give the public reasonable assurance that the water which they are consuming is satisfactory, the Board has established rules for the design, construction, operation and maintenance of public water supplies.

R309-102-2. Construction of Public Drinking Water Facilities.

The following requirements pertain to the construction of public water systems.

2.1 Approval of Engineering Plans and Specifications

Complete plans and specifications for all public drinking water projects, as described in R309-102-2.3, must be approved in writing by the Executive Secretary prior to the commencement of construction. A 30-day review time should be assumed.

Appropriate engineering reports, supporting information and master plans may also be required by the Executive Secretary as needed to evaluate the proposed project. A certificate of convenience and necessity or an exemption therefrom, issued by the Public Service Commission, must be filed with the Executive Secretary prior to approval of any plans or specifications for projects described in R309-102-2.3.a.

2.2 Acceptable Design and Construction Methods

The design and construction methods of all public drinking water facilities must conform to the applicable standards contained in R309-105 through R309-112 of these rules. The Executive Secretary may require modifications to plans and specifications before approval is granted.

There may be times in which the requirements of the Design and Construction Standards are not appropriate. Thus, the Executive Secretary may grant an "exception" to the Design and Construction Standards (R309-105 through R309-112) if it can be shown that the granting of such an exception will not jeopardize the public health.

Alternative or new treatment techniques may be developed which are not specifically addressed by the Design and Construction Standards. These treatment techniques may be accepted by the Executive Secretary if it can be shown that:

1. They will result in a finished water meeting the requirements of R309-103 of these regulations.

2. The technique will produce finished water which will protect public health to the same extent provided by comparable treatment processes outlined in the Design and Construction Standards.

3. The technique is as reliable as any comparable treatment process governed by the Design and Construction Standards.

2.3 Description of "Public Drinking Water Project"

The following describes what projects must be submitted for review and defines the term "Public Drinking Water Project":

a. All facilities of any new public drinking water supply.

b. Any addition to or modification of an existing public water supply which will or may affect the quality and/or quantity of the supply. Thus, additions to or modifications of the following facility or facilities must be submitted for review:

1. Sources
2. Transmission lines
3. Treatment
4. Storage
5. Pumping
6. Pressure modification

7. Distribution system modifications or extensions of more than 500 feet; or affecting or potentially adding more than 10% of the number of connections in the system. These modifications and extensions are not considered routine. However, suppliers with full-time water department staff, which includes a registered professional engineer, need only submit plans for distribution system extensions or modifications exceeding the 10% limitations given above (i.e. length limitation would not apply in this case).

Routine maintenance or repairs of existing public water systems, carried out in conformance with all applicable regulations (see R309-102-4.2) and not altering the system's ability to provide an adequate supply of water, need not be submitted for review.

2.4 Preparation of Plans and Specifications

2.4.1 Professional Registration

Plans and specifications for all public drinking water projects must be stamped and signed by a licensed professional engineer in accordance with Utah Code Annotated Sections 58-22-602(2) et seq. Any document not so stamped will be returned without review.

Specifications for the drilling of a public water supply well may be prepared and submitted by a licensed well driller holding a current Utah Well Driller's Permit if authorized by the Executive Secretary.

2.4.2 Drawing Quality and Size

Drawings which are submitted shall be compatible with Division of Drinking Water Document storage. Drawings which are illegible or of unusual size will not be accepted for review. Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".

2.5 Requirements After Approval of Plans for Construction

After the approval of plans for construction, the following are required:

a. If construction or the ordering of substantial equipment has not commenced within one year, a renewal of the approval must be obtained prior to proceeding with construction.

b. As a project proceeds, copies of all "change orders" affecting facilities as described in R309-102-2.3 must be forwarded to the Division of Drinking Water.

c. Changes to the project which will or may have an impact on the quantity or quality of the delivered water shall be reviewed and approved by the Executive Secretary. Where such changes involve revisions to previously submitted plans or specifications, such changes shall be clearly noted on the appropriate sheet or page.

d. The Division of Drinking Water shall be informed of the progress of a project (as specified in the plan approval letter) and may conduct a final inspection prior to commencement of the regular use of the facility. Interim inspections may also be

conducted.

e. The Executive Secretary may require that "as built" drawings be submitted by the water supplier to the Division of Drinking Water. The as-built drawings must confirm that the project has been constructed in accordance with the approved plans.

R309-102-3. Existing Water System Facilities.

All public water systems must deliver water meeting the applicable requirements of R309-103 of these regulations.

Existing facilities must be brought into compliance with R309-105 through R309-112 or must be reliably capable of delivering water meeting the requirements of R309-103.

In situations where a water system is providing water of unsatisfactory quality, or when the quality of the water or the public health is threatened by poor physical facilities, the water system management must solve the problem(s).

R309-102-4. Operation and Maintenance Procedures.

All routine operation and maintenance of public water supplies must be carried out with due regard for public health and safety. The following sections describe procedures which must be used in carrying out some common operation and maintenance procedures.

4.1 Chemical Addition

Water system operators must determine that all chemicals added to water intended for human consumption are suitable for potable water use and comply with National Sanitation Foundation (NSF) Standard 60.

No chemicals or other substances may be added to public water supplies unless the chemical addition facilities and chemical type have been reviewed and approved by the Division of Drinking Water.

Chlorine, when used in the distribution system, must be added in sufficient quantity to achieve either "breakpoint" and yield a detectable free chlorine residual or a detectable combined chlorine residual in the distribution system at points to be determined by the Executive Secretary. Residual checks must be taken daily by the operator of any system using disinfectants. The Executive Secretary may, however, reduce the frequency of residual checks if he determines that this would be an unwarranted hardship on the water system operator and, furthermore, the disinfection equipment has a verified record of reliable operation. Suppliers, when checking for residuals, must use test kits and methods which meet the requirements of the U.S. EPA. The "DPD" test method is recommended for free chlorine residuals. Information on the suppliers of this equipment is available from the Division of Drinking Water.

4.2 New and Repaired Mains

All new water mains must meet the requirements of R309-112-1.1 with regard to materials of construction. All products in contact with culinary water shall comply with National Sanitation Foundation (NSF) Standard 61.

All new and repaired water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651. The chlorine solution must be flushed from the water main with potable water prior to the main being placed in use.

All products used to recoat the interiors of storage structures and which may come in contact with culinary water shall comply with National Sanitation Foundation (NSF) Standard 61.

4.3 Reservoir Maintenance and Disinfection

After a reservoir has been entered for maintenance or re-coating, it must be disinfected prior to being placed into service. Procedures given in AWWA Standard C652 must be followed in this regard.

4.4 Spring Collection Area Maintenance

Spring collection areas shall be periodically cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Executive Secretary. Such approval shall be given 1) only when acceptable pesticides are proposed; 2) when the pesticide product manufacturer certifies that no harmful substance will be imparted to the water; and 3) only when spring development meets the requirements of these regulations (see R309-106-3.5).

4.5 Security

All water system facilities such as spring junction boxes, well houses, reservoirs, and treatment facilities must be secure.

4.6 Seasonal Operation

Water systems operated seasonally must be disinfected and flushed according to the techniques given in AWWA Standard C601 and D105 prior to each season's use. A satisfactory bacteriologic sample must be achieved prior to use. During the non-use period, care must be taken to close all openings into the system.

4.7 Pump Lubricants

All oil lubricated pumps for culinary wells must utilize mineral oils suitable for human consumption as determined by the Executive Secretary. To assure proper performance, and to prevent the voiding of any warranties which may be in force, the water supplier should confirm with individual pump manufacturers that the oil which is selected will have the necessary properties to perform satisfactorily.

R309-102-5. Cross Connection Control.

The water supplier shall not allow a connection to his system which may jeopardize its quality and integrity. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements of Chapter 10 of the Uniform Plumbing Code must be met with respect to cross connection control and backflow prevention.

Suppliers shall maintain an inventory of each pressure atmospheric vacuum breaker, double check valve, reduced pressure zone principle assembly, and high hazard air gap used by their customers, and a service record for each such assembly.

Backflow prevention assemblies must be inspected and tested at least once a year, by an individual certified for such work. This responsibility may be borne by the water system or the water system management may require that the customer having the backflow prevention assembly be responsible for having the device tested.

Suppliers serving areas also served by a pressurized irrigation system must prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code Annotated 1953 as amended.

R309-102-6. Monitoring, Reporting and Keeping Records of Finished Water Quality.

All public water systems are required to monitor their water according to the requirements of R309-104 to determine if the water quality standards of R309-103 have been met. Water systems are also required to keep records and, under certain circumstances, give public notice as required in R309-104.

R309-102-7. Operational Reports.

7.1 Treatment techniques for acrylamide and epichlorohydrin.

Each public water system shall certify annually in writing to the Executive Secretary (using third party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the levels specified in R309-104-4.7.2.c.

Certifications may rely on manufacturers data.

7.2 All water systems using chemical addition or specialized equipment for the treatment of drinking water must regularly complete operational reports. This information shall be evaluated to confirm that the treatment process is being done properly, resulting in successful treatment.

The information to be provided, and the frequency at which it is to be gathered and reported, will be determined by the Executive Secretary.

R309-102-8. Annual Reports.

All community water systems shall be required to complete annual report forms furnished by the Division of Drinking Water. The information to be provided should include:

a. the status of all water system projects started during the previous year,

b. water demands met by the system,

c. problems experienced,

d. anticipated projects.

R309-102-9. Operator Certification.

All community and non-transient non-community water systems or any public system that employs treatment techniques for surface water or ground water under the direct influence of surface water must have an appropriately certified operator in accordance with the requirements of the Drinking Water Board's Rules. Refer to R309-301, Required Certification Rules for Water Supply Operators in the State of Utah, for specific requirements.

R309-102-10. Emergencies.

The Executive Secretary or the local health department must be informed by telephone by a water supplier of any "emergency situation". The term "emergency situation" includes the following:

1. The malfunction of any disinfection facility such that a detectable residual cannot be maintained at all points in the distribution system.

2. The malfunction of any "complete" treatment plant such that a clearwell effluent turbidity greater than 5 NTU is maintained longer than fifteen minutes.

3. Muddy or discolored water (which cannot be explained by air entrainment or re-suspension of sediments normally deposited within the distribution system) is experienced by a significant number of individuals on a system.

4. An accident has occurred which has, or could have, permitted the entry of untreated surface water and/or other contamination into the system (e.g. break in an unpressurized transmission line, flooded spring area, chemical spill, etc.)

5. A threat of sabotage has been received by the water supplier or there is evidence of vandalism or sabotage to any public drinking water supply facility which may affect the quality of the delivered water.

6. Any instance where a consumer reports becoming sick by drinking from a public water supply and the illness is substantiated by a doctor's diagnosis (unsubstantiated claims should also be reported to the Division of Drinking Water, but this is not required).

If an emergency situation exists, the water supplier must then contact the Division of Drinking Water in Salt Lake City within eight hours. Division personnel may be reached at all times through 801-536-4123.

All suppliers are advised to develop contingency plans to cope with possible emergency situations. In many areas of the state the possibility of earthquake damage must be realistically considered.

R309-102-11. Location of New Connections.

Unless otherwise specifically approved by the Executive Secretary, no water supplier shall allow any connection to the water system where water pressure at the point of connection will fall below 20 psi during the normal operation of the water system.

See R309-110-4.1. for conditions in which the use of individual home booster pumps may be allowed.

R309-102-12. Definitions.

The following definitions apply to this section:

Approval - unless indicated otherwise, shall be taken to mean a written statement of acceptance.

AWWA - means the American Water Works Association. This association's standards are used throughout the drinking water industry and are available at the Division of Drinking Water office.

Board - means the Drinking Water Board.

Breakpoint - The point at which enough chlorine has been added to water to permit the formation of free available chlorine. The chlorine added prior to achieving this condition is "tied up" by naturally occurring substances in the water, resulting in reduced disinfecting capability.

Community Water System - means a public drinking water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

Executive Secretary - means the Executive Secretary of the

Drinking Water Board.

Must - means that a particular action is obliged and has to be accomplished.

NSF - means the National Sanitation Foundation. This entity's standards are used within the drinking water industry and are available at the Division of Drinking Water office.

Non-Community Water System - means a public drinking water system that is not a community water system or a non-transient non-community water system.

Public Water System - means a system, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least 15 service connections, or regularly serves an average of at least 25 individuals daily for at least sixty days out of the year. Such term includes collection, treatment, storage and distribution facilities under control of the operator and used primarily in connection with the system. Additionally, the term includes collection, pretreatment or storage facilities used primarily in connection with the system but not under such control.

Shall - means that a particular action is obliged and has to be accomplished.

Should - means that a particular action is recommended but does not have to be accomplished.

Supplier - means a person who owns or operates a public water system.

Surface Water Source - means a source of culinary water which lies or travels on the surface prior to its capture for use in a culinary water system. Such term includes lakes, ponds, impoundments, streams and springs which do not meet the requirements necessary to be considered a groundwater source.

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R309. Environmental Quality, Drinking Water.
R309-115. Administrative Procedures.
R309-115-1. Scope of Rule.

(1) This rule R309-115 sets out procedures for conducting adjudicative proceedings under Title 19, Chapter 4, Utah Safe Drinking Water Act, and governed by Title 63, Chapter 46b, the Utah Administrative Procedures Act.

(2) The executive secretary, or his delegatee as authorized, may issue initial orders or notices of violation as authorized by the Board. Following the issuance of an initial order or notice of violation under Title 19, Chapter 4, the recipient, or in some situations an intervenor, may contest that order or notice in a proceeding before the board or before a presiding officer appointed by the board.

(3) Issuance of initial orders and notices of violation are not governed by the Utah Administrative Procedures Act as provided under 63-46b-1(2)(k) and are not governed by sections R309-115-3 through R309-115-14 of this Rule. Initial orders and notices of violation are further described in R309-115-2(1).

(4) Proceedings to contest an initial order or notice of violation are governed by the Utah Administrative Procedures Act and by this rule R309-115.

(5) The Utah Administrative Procedures Act and this rule R309-115 also govern any other formal adjudicative proceeding before the Drinking Water Board.

R309-115-2. Initial Proceedings.

(1) Initial Proceedings Exempt from Utah Administrative Procedures Act. Initial orders and notices of violation include, but are not limited to, initial proceedings regarding:

(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;

(b) notices of violation and orders associated with notices of violation;

(c) orders to comply and orders to cease and desist;

(d) requests for variances, exemptions, and other approvals;

(e) certification of water supply operators under R309-300 and backflow technicians under R309-302;

(f) ratings of water systems under R309-150-4; and

(g) assessment of fees except as provided in R309-115-14(7).

(2) Effect of Initial Orders and Notices of Violation.

(a) Unless otherwise stated, all initial orders or notices of violation are effective upon issuance. All initial orders or notices of violation shall become final if not contested within 30 days after the date issued.

(b) The date of issuance of an initial order or notice of violation is the date the initial order or notice of violation is mailed.

(c) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review, or judicial appeal.

R309-115-3. Contesting an Initial Order or Notice of Violation.

(1) Procedure. Initial orders and notices of violation, as described in R309-115-2(1), may be contested by filing a written Request for Agency Action to the Executive Secretary, Drinking Water Board, Division of Drinking Water, PO Box 144830, Salt Lake City, Utah 84114-4830.

(2) Content Required and Deadline for Request. Any such request is governed by and shall comply with the requirements of Subsection 63-46b-3(3). If a request for agency action is made by a person other than the recipient of an order or notice of violation, the request for agency action shall also specify in writing sufficient facts to allow the board to determine whether the person has standing under R309-115-6(3) to bring the requested action.

(3) A request for agency action made to contest an initial order or notice of violation shall, to be timely, be received for filing within 30 days of the issuance of the initial order or notice of violation.

(4) Stipulation for Extending Time to File Request. The executive secretary and the recipient of an initial order or notice of violation may stipulate to an extension of time for filing the request, or any part thereof.

R309-115-4. Designation of Proceedings as Formal or Informal.

(1) Contest of an initial order or notice of violation resulting from proceedings described in R309-115-2(1) shall be conducted as a formal proceeding.

(2) The board in accordance with Subsection 63-46b-4(3) may convert proceedings which are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

R309-115-5. Notice of and Response to Request for Agency Action.

(1) The presiding officer shall promptly review a request for agency action and shall issue a Notice of Request for Agency Action in accordance with Subsection 63-46b-3(3)(d) and (e). If further proceedings are required and the matter is not set for hearing at the time the Notice is issued, notice of the time and place for a hearing shall be provided promptly after the hearing is scheduled.

(2) The Notice shall include a designation of parties under R309-115-6(3), and shall notify respondents that any response to the Request for Agency Action shall be due within 30 days of the day the Notice is mailed, in accordance with 63-46b-6.

R309-115-6. Parties and Intervention.

(1) Determination of a Party. The following persons are parties to an adjudicative proceeding:

(a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application or approval request that was approved or disapproved by initial order of the executive secretary;

(b) The executive secretary of the board;

(c) All persons to whom the board has granted intervention under R309-115-6(2); and

(d) Any other person with standing who brings a Request for Agency Action as authorized by the Utah Administrative Procedures Act and these rules.

(2) Intervention.

(a) A Petition to Intervene shall meet the requirements of

63-46b-9. Except as provided in (2)(c), the timeliness of a Petition to Intervene shall be determined by the presiding officer under the facts and circumstances of each case.

(b) Any response to a Petition to Intervene shall be filed within 20 days of the date the Petition was filed, except as provided in R309-115-6(2)(c).

(c) A person seeking to intervene in a proceeding for which agency action has not been initiated under 63-46b-3 may file a Request for Agency Action at the same time the person files a Petition for Intervention. Any such Request for Agency Action and Petition to Intervene must be received by the board for filing within 30 days of the issuance of the initial order or notice of violation being challenged. The time for filing a Request for Agency Action and Petition to Intervene may be extended by stipulation of the executive secretary, the person subject to an initial order or notice of violation, and the potential intervenor.

(d) Any response to a Petition to Intervene that is filed at the same time as a Request for Agency Action shall be filed on or before the day the response to the Request for Agency Action is due.

(e) A Petition to Intervene shall be granted if the requirements of 63-46b-9(2) are met.

(3) Standing. No person may initiate or intervene in an agency action unless that person has standing. Standing shall be evaluated using applicable Utah case law.

(4) Designation of Parties. The presiding officer shall designate each party as a petitioner or respondent.

(5) Amicus Curiae (Friend of the Court). A person may be permitted by the presiding officer to enter an appearance as amicus curiae (friend of the court), subject to conditions established by the presiding officer.

R309-115-7. Conduct of Proceedings.

(1) Role of Board.

(a) The board is the "agency head" as that term is used in Title 63, Chapter 46b. The board is also the "presiding officer," as that term is used in Title 63, Chapter 46b, except:

(i) The chair of the board shall be considered the presiding officer to the extent that these rules allow; and

(ii) The board may appoint one or more presiding officers to preside over all or a portion of the proceedings.

(b) The chair of the board may delegate the chair's authority as specified in this rule to another board member.

(2) Appointed Presiding Officers. Unless otherwise explicitly provided by written order, any appointment of a presiding officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except rulings on intervention, stays of orders, dispositive motions, and issuance of the final order. As used in this rule, the term "presiding officer" shall mean "presiding officers" if more than one presiding officer is appointed by the board.

(3) Board Counsel. The Presiding Officer may request that Board Counsel provide legal advice regarding legal procedures, pending motions, evidentiary matters and other legal issues.

(4) Pre-hearing Conferences. The presiding officer may direct the parties to appear at a specified time and place for pre-hearing conferences for the purposes of establishing schedules, clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, encouraging settlement, or giving the parties notice of the presiding officer's availability to parties.

(5) Pre-hearing Documents.

(a) At least 15 business days before a scheduled hearing, the executive secretary shall compile a draft list of prehearing documents as described in (b), and shall provide the list to all other parties. Each party may propose to add documents to or delete document from the list. At least seven business days before a scheduled hearing, the executive secretary shall issue a final prehearing document list, which shall include only those documents upon which all parties agree unless otherwise ordered by the presiding officer. All documents on the final prehearing document list shall be made available to the presiding officer prior to the hearing, and shall be deemed to be authenticated.

(b) The prehearing document list shall ordinarily include any pertinent permit application, any pertinent inspection report, any pertinent draft document that was released for public comment, any pertinent public comments received, any pertinent initial order or notice of violation, the request for or notice of agency action, and any responsive pleading. The list is not intended to be an exhaustive list of every document relevant to the proceeding, however any document may be included upon the agreement of all parties.

(6) Briefs.

(a) Unless otherwise directed by the presiding officer, parties to the proceeding shall submit a pre-hearing brief, which shall include a proposed order meeting the requirements of 63-46b-10, at least fifteen business days before the hearing. The prehearing brief shall be limited to 20 pages exclusive of the proposed order.

(b) Post-hearing briefs and responsive briefs will be allowed only as authorized by the presiding officer.

(7) Schedules.

(a) The parties are encouraged to prepare a joint proposed schedule for discovery, for other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings. If the parties cannot agree on a joint proposed schedule, any party may submit a proposed schedule to the presiding officer for consideration.

(b) The presiding officer shall establish a schedule for the matters described in (a) above.

(8) Motions. All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the presiding officer. A memorandum in opposition to a motion may be filed within 10 days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the presiding officer.

(9) Filing and Copies of Submissions. The original of any motion, brief, petition for intervention, or other submission shall be filed with the executive secretary. In addition, the submitter shall provide a copy to each presiding officer, to each party of record, and to all persons who have petitioned for intervention, but for whom intervention has been neither granted nor denied.

R309-115-8. Hearings.

The presiding officer shall control the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements.

R309-115-9. Orders.

(1) Recommended Orders of Appointed Presiding Officers.

(a) The appointed presiding officer shall prepare a recommended order for the board, and shall provide copies of the recommended order to the board and to all parties.

(b) Any party may, within 10 days of the date the recommended order is mailed, delivered, or published, comment on the recommended order. Such comments shall be limited to 15 pages and shall cite to the specific parts of the record which support the comments.

(c) The board shall review the recommended order, comments on the recommended order, and those specific parts of the record cited by the parties in any comments. The board shall then determine whether to accept, reject, or modify the recommended order. The board may remand part or all of the matter to the presiding officer or may itself act as presiding officers for further proceedings.

(e) The board may modify this procedure with notice to all parties.

(2) Final Orders. The board shall issue a final order which shall include the information required by 63-46b-10 or 63-46b-5(1)(i).

R309-115-10. Stays of Orders.

(1) Stay of Orders Pending Administrative Adjudication.

(a) A party seeking a stay of a challenged order during an adjudicative proceeding shall file a motion with the board. If granted, a stay would suspend the challenged order for the period as directed by the board.

(b) The board may order a stay of the order if the party seeking the stay demonstrates the following:

(i) The party seeking the stay will suffer irreparable harm unless the stay is issued;

(ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The stay, if issued, would not be adverse to the public interest; and

(iv) There is substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(2) Stay of the Order Pending Judicial Review.

(a) A party seeking a stay of the board's final order during the pendency of judicial review shall file a motion with the board.

(b) The board as presiding officer may grant a stay of its order during the pendency of judicial review if the standards of R309-115-10(1)(b) are met.

R309-115-11. Reconsideration.

No agency review under Section 63-46b-12 is available. A party may request reconsideration of an order of the presiding officer as provided in Section 63-46b-13.

R309-115-12. Disqualification of Board Members or Other Presiding Officers.

(1) Disqualification of Board Members or Other Presiding Officers.

(a) A member of the board or other presiding officer shall disqualify himself from performing the functions of the presiding officer regarding any matter in which he, or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;

(iii) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(iv) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

(v) Is likely to be a material witness in the proceeding.

(b) A member of the board or other presiding officer is also subject to disqualification under principles of due process and administrative law.

(c) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. Section 67-16-1 et seq.

(2) Motions for Disqualification. A motion for disqualification shall be made first to the presiding officer. If the presiding officer is appointed, any determination of the presiding officer upon a motion for disqualification may be appealed to the board.

R309-115-13. Declaratory Orders.

(1) A request for a declaratory order may be filed in accordance with the provisions of Section 63-46b-21. The request shall be titled a petition for declaratory order and shall meet the requirements of 63-46b-3(3). The request shall also set out a proposed order.

(2) Requests for declaratory order, if set for adjudicative hearing, will be conducted using formal procedures unless converted to an informal proceeding under R309-115-4(2) above.

(3) The provisions of Section 63-46b-4 through 63-46b-13 apply to declaratory proceedings, as do the provisions of this Rule R309-115.

R309-115-14. Miscellaneous.

(1) Modifying Requirements of Rules. For good cause, the requirements that would otherwise be imposed by these rules may be waived or modified by order of the presiding officer.

(2) Extensions of Time. If requested before the expiration of the pertinent time limit, the presiding officer may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R309-115-7(6). The presiding officer may also postpone hearings. The chair of the board may act as presiding officer for purposes of this paragraph.

(3) Computation of Time. Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure

except that no additional time shall be allowed for service by mail.

(4) Appearances and Representation.

(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his, her, or its interest in the proceeding.

(b) Any participant may be represented by legal counsel.

(5) Other Forms of Address. Nothing in these rules shall prevent any person from requesting an opportunity to address the board as a member of the public, rather than as a party. An opportunity to address the board shall be granted at the discretion of the board. Addressing the board in this manner does not constitute a request for agency action under R309-115-3.

(6) Settlement. A settlement may be through an administrative order or through a proposed judicial consent decree, subject to the agreement of the settlers.

(7) Requests for Records. This rule does not govern requests for records or related assessment of fees. Requests for records and related assessments of fees for records are governed under the Title 63, Chapter 2, Utah Government Record Access and Management Act.

(8) Grants and loans. Determinations with respect to grants and loans made under R309-700, R309-705 and R309-352 are not governed by Title 63, Chapter 46b, Utah Administrative Procedures Act, or by this rule.

KEY: drinking water, administrative procedure, hearings*
August 24, 2001 **63-46b**
19-4

R309. Environmental Quality, Drinking Water.

R309-302. Required Certification Rules for Backflow Technicians in the State of Utah.

R309-302-1. Objectives.

These certification rules are established in order to promote the use of trained, experienced professional personnel in protecting the public's health.

To establish standards for training, examining, and certification of those personnel involved with cross connection control program administration, testing, maintenance, and repair of backflow prevention assemblies, and the instruction of Backflow Technicians.

R309-302-2. Authority.

The Backflow Technician certification program is authorized by Utah Code Annotated, Section 19-4-104(4)(a).

R309-302-3. Extent of Coverage.

These rules shall apply to all personnel who will be:

a. directly involved with the administration or enforcement of any cross connection control program being administered by a drinking water system;

b. testing, maintaining and/or repairing any backflow prevention assembly;

c. instructors within the certification program, regardless of institution or program.

R309-302-4. Definitions.

Cross Connection Control Subcommittee - means the duly constituted advisory subcommittee appointed by the Safe Drinking Water Committee to advise the Safe Drinking Water Committee on Backflow Technician Certification and the Cross Connection Control Program of Utah. The Subcommittee will review the qualifications of applicants and make recommendations to the Safe Drinking Water Committee for certification of those individuals.

Bureau of Drinking Water/Sanitation - means that Bureau within the Department of Health which regulates public drinking water systems.

Cross Connection Control Program - means the program administered by the public water system in which cross connections are either eliminated or controlled.

Executive Secretary - means the Executive Secretary to the Utah Safe Drinking Water Committee.

Class - means the level of certification of Backflow Prevention Technician (Class I, II and III).

Public Drinking Water Supply - means a system, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least 15 service connections, or regularly serves an average of at least 25 individuals daily for at least 60 days out of the year.

Renewal Course - means a course of instruction, approved by the Subcommittee, which is a prerequisite to the renewal of a Backflow Technician's Certificate.

Secretary to the Subcommittee - means that individual appointed by the Executive Secretary to conduct the business of the Subcommittee.

Utah Safe Drinking Water Committee - means the duly constituted Committee appointed by the Governor, and responsible for the promulgation, interpretation and enforcement of public drinking water regulations within Utah.

R309-302-5. General Policies.

5.1 Certification Application: Any individual may apply for certification.

5.2 Certification Classes: The classes of certificates will be: Class I, Class II, and Class III.

5.2.1 Class I - Backflow Technician: This certificate will be issued to those individuals who are directly involved in administering a cross connection control program, who have demonstrated their knowledge and ability by passing the certification examination.

These individuals may NOT test, maintain or repair any backflow prevention assembly for record (except to insure proper testing techniques are being utilized within their jurisdiction).

These individuals may conduct plan/design reviews, hazard assessment investigations, compliance inspections, and enforce local laws, codes, (including the Utah Plumbing Code as it applies to cross connection control and backflow prevention), rules and regulations and policies within their jurisdictions, and offer technical assistance as needed.

5.2.2 Class II - Backflow Technician: This certificate will be issued to those individuals who meet the criteria for Class I and in addition having proven qualified and competent to test, maintain, and/or repair (see Section 5.3.3) backflow prevention assemblies (commercially as well as within their jurisdiction) by passing the practical examination.

5.2.3 Class III - Backflow Technician: This certificate will be issued to those individuals who meet the criteria for Class II and in addition have proven qualified and competent to instruct approved Backflow Technician Certification classes by participating in and passing an approved "Train The Trainers" course.

5.3 Certification Requirements: Those individuals seeking certification as a Backflow Technician must participate in an approved Technician's course of instruction and pass the examination required per class of certification.

5.3.1 All individuals who hold a valid Backflow Technician's license issued prior to the initiation of these rules will be issued a Class II - Backflow Technician certificate.

5.3.2 All individuals who instruct Backflow Technician training courses must hold a current Class III - Backflow Technician certificate.

5.3.3 The issuance of a Backflow Technician certificate (Class I, II or III) does NOT authorize that individual to install or replace any backflow prevention assembly. The installation replacement or repair of assemblies must be made by a licensed Journeyman Plumber (Title 58, Chapter 54, Utah Code Annotated), except when the Backflow Technician is an agent of the assembly owner.

R309-302-6. Examinations.

6.1 Exam Issuance: The examination recognized by the Subcommittee for certification will be issued through the Bureau of Drinking Water/Sanitation for both initial certification and renewals to those certified instructors teaching a course approved by the Cross Connection Control

Subcommittee.

If an individual fails an examination, he may file another application for reexamination on the next available test date.

6.1.1 Examinations (both written and practical) that are used to determine competency and ability will be approved by the Cross Connection Control Subcommittee prior to being issued.

6.1.2 Oral examinations may be administered, with approval from the Cross Connection Control Subcommittee, on a case-by-case basis.

6.2 Exam Scoring: Class I, Class II and Class III Technician's must successfully complete a written exam with a score of 70% or higher. Class II Technician's must also successfully demonstrate competence and ability in the practical examination, for the testing of the Pressure Atmospheric Vacuum Breaker, Double Check Valve Assembly, and Reduced Pressure Zone Principal Backflow Prevention Assemblies.

6.2.1 The practical examination will be conducted by a minimum of two Class III Technicians.

6.2.2 Each candidate must demonstrate competence and will be evaluated by all proctors and assessed a pass or fail grade in each of the following areas.

1) Properly identify backflow assembly
2) Properly identify test equipment needed
3) Properly connect test equipment
4) Test assembly
5) Identify inaccuracies
6) Properly diagnose assembly problems
7) Properly record test results

The candidate must receive a pass grade from each proctor in all areas listed above for each assembly tested in order to pass the practical examination.

6.2.3 An individual may apply for reexamination of either portion of the examination a maximum of two times. After a third failing grade, the individual must register for and complete another technician's course prior to the reexamination.

6.3 Class III Exam: Class III Technicians must participate in, and pass, a "train the trainers" course, approved by the Cross Connection Control Subcommittee, in addition to the successful completion of the Class II Technician's certification course.

R309-302-7. Certificates.

7.1 Certificate Issuance: For a certificate to be issued, the individual must complete a Technician's training course and pass with a minimum score of 70% the written examination. For Class II and III certificates, passing marks on the practical portion of the examination will also be required.

7.2 Certificate Renewal: The Backflow Technician's certificate will expire December 31, three years from the year of issuance.

Backflow Technician certificates will be issued by the Subcommittee's Secretary, by delegated authority from the Safe Drinking Water Committee.

7.2.1 The Backflow Technician's certificate may be renewed up to six months in advance of the expiration date.

7.2.2 To renew a Technician's certificate, the Technician must register and participate in a backflow prevention renewal course, and pass the renewal examination (minimum score of 70%) which will include a practical portion for Class II and III Certification.

7.2.3 To renew a Technician certificate that was issued prior to December 31, 1989, the Technician must register and attend a one day renewal course and pass a renewal written exam (minimum 70%) only. (There will not be a practical portion included in the renewal courses until 1992.)

7.2.4 Should the applicant fail the renewal written examination (minimum score of 70%), renewal of that existing license will not be allowed until a passing score is obtained. If the applicant fails to pass the test after three attempts, the applicant will be required to participate in an approved Backflow Technician's course before retaking the written and practical examinations. (Class I Technicians would only need to pass the written examination.)

7.3 Certification Revocation: The Subcommittee's Secretary is authorized to suspend or revoke a Backflow Technician's certification upon recommendation of the Subcommittee if, following a hearing of the Subcommittee, it is found that:

a. There is evidence that a disregard of public health and safety has occurred.

b. There is evidence that a violation of the Plumber's Law (Title 58 Chapter 54), that prohibits installation or replacement of assemblies, has occurred.

c. There is evidence that a misrepresentation or falsification of figures or reports concerning backflow prevention assembly or test results has occurred.

d. There is evidence that a failure to notify the proper authorities of a failing backflow prevention assembly within five days has occurred.

e. There is evidence that a failure to notify the proper authorities of a backflow incident for which the technician had personal knowledge has occurred.

f. There is evidence that a change of the design, material or operational characteristics of a backflow prevention assembly has occurred.

7.3.1 Suspension or revocation of a Technician's certificate will be in writing and will state the reasons for such actions and available appeal procedures. Disasters or "Acts of God", which could not be reasonably anticipated or prevented, will not be grounds for suspension or revocation actions.

7.4 Appeal Procedures: Any individual who receives a notice of suspension or revocation may, within 30 days of receipt, make a written request for an appeal to the Executive Secretary of the Safe Drinking Water Committee for a hearing before that Committee. The Committee shall follow the procedures for such a hearing as set forth in the Utah State Code.

R309-302-8. Fees.

8.1 Fees: The fees for certification will be submitted in accordance with Section 63-38-3.

All fees will be deposited in a special account to defray the costs of administering the Cross Connection Control and Certification programs.

8.2 Renewal Fees: The renewal fee for all classes of Technicians will be in accordance with Section 63-38-3.

8.3 All fees will be deposited in a special account to defray the cost of the program.

8.4 All fees are non-refundable.

R309-302-9. Training.

9.1 Training: Minimum training course curriculum, written tests and performance tests will be established by the Subcommittee and implemented by the Secretary of the Subcommittee for both the Technicians course and the renewal short course.

9.1.1 The length of the renewal course shall not exceed two days including the renewal examination (both written and "hands on").

R309-302-10. Cross Connection Control Subcommittee.

10.1 Appointment of Members: A Cross Connection Control Subcommittee will be appointed by the Safe Drinking Water Committee from nominations made by cooperating agencies.

10.2 Responsibility: The Subcommittee is charged with the responsibility of conducting all work necessary to promote the cross connection program as well as recommending qualified individuals for certification, and overseeing the maintenance of necessary records.

10.3 Representative Agencies: The Subcommittee shall consist of five members:

1. One member (nominated by the League of Cities and Towns) shall represent a community drinking water supply.

2. One member (nominated by the Utah Pipes Trades Education Program) shall represent the plumbing trade and must be a licensed Journeyman Plumber and Class II or III Backflow Technician.

3. One member (nominated by the Utah Mechanical Contractors Association) shall represent the mechanical trade contractors.

4. One member (nominated by the Safe Drinking Water Committee) shall represent the Safe Drinking Water Committee.

5. One member (nominated by the Rural Water Association of Utah) shall represent small water systems.

10.4 Term: Each member shall serve a two year term. At the initial meeting of the Subcommittee, lots will be drawn corresponding to two one and three two year terms. Thereafter, all Subcommittee members' terms will be on a staggered basis.

10.5 Nominations of Members: All nominations of Subcommittee members will be presented to the Safe Drinking Water Committee, which reserves the right to refuse any nomination.

10.6 Unexpired Term: An appointment to succeed a Subcommittee member who is unable to complete his full term shall be for the unexpired term only, and shall be nominated to, and appointed by, the Safe Drinking Water Committee in accordance with R309-302-10.1.

10.7 Quorum: At least three Subcommittee members shall be required to constitute a quorum to conduct the Subcommittee's business.

10.8 Officers: Each year the Subcommittee will elect officers as needed to conduct its business.

10.8.1 The Subcommittee shall meet at least once a year.

10.8.2 All actions taken by the Subcommittee will require a minimum of three affirmative votes.

R309-302-11. Secretary of the Subcommittee.

11.1 Appointment: The Executive Secretary of the Safe Drinking Water Committee will appoint, with the consent of the Subcommittee, a staff member to function as the Secretary to the Subcommittee. This Secretary will serve to coordinate the business of the Subcommittee and to bring issues before the Subcommittee.

11.2 Duties: The Secretary's duties will be to:

a. act as a liaison between the Subcommittee, certified Technicians, public water suppliers, and the public at large;

b. maintain records necessary to implement and enforce these rules;

c. notify sponsor agencies of Subcommittee nominations as needed;

d. coordinate and review all cross connection control programs, certification training and the certification of Backflow Technicians;

e. serve as a source of public information for Certified Technicians, water purveyors, and the public at large;

f. receive and process applications for certification;

g. investigate and verify all complaints against or concerning certified Backflow Prevention Technicians, and advise the Executive Secretary of the Safe Drinking Water Committee regarding any enforcement actions that are being recommended by the Subcommittee as outlined in Section R309-302-7.4;

h. develop and administer examinations;

i. review and correct examinations.

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R309. Environmental Quality, Drinking Water.
R309-705. Financial Assistance: Federal Drinking Water Project Revolving Loan Program.
R309-705-1. Purpose.

The purpose of this rule is to establish criteria for financial assistance to public drinking water system in accordance with a federal grant established under 42 U.S.C. 300j et seq., federal Safe Drinking Water Act.

R309-705-2. Statutory Authority.

The authority for the Department of Environmental Quality acting through the Drinking Water Board to issue financial assistance for drinking water projects from a federal capitalization grant is provided in 42 U.S.C. 300j et seq., federal Safe Drinking Water Act, and Title 73, Chapter 10c, Utah Code Unannotated.

R309-705-3. Definitions.

Definitions for general terms used in this rule are given in R309-110. Definitions for terms specific to this rule are given below.

"Board" means the Drinking Water Board.

"Drinking Water Project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way, except property condemnation cost, which are not eligible costs; engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; Hardship Grant Assessments and interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income which is less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax commission from federal individual income tax returns excluding zero exemption returns.

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Eligible Water System" means any community drinking water system, either privately or publicly owned; and nonprofit noncommunity water systems.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, for the purpose of reducing the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.

"Financial Assistance" means a project loan, credit enhancement agreement, or interest buy-down agreement.

"Hardship Grant Assessment" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal. Hardship grant assessment funds shall be subject to the requirements of UAC R309-700 for hardship grants.

"Negative Interest" means a loan with an interest rate at less than zero percent. The repayment schedule for loans having a negative interest rate will be prepared by the Drinking Water Board.

"Principal Forgiveness" means a loan wherein a portion of the loan amount is "forgiven" upon closing the loan. The terms for principal forgiveness will be as directed by section 4 of this rule, and by the Drinking Water Board.

"Interest" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal

R309-705-4. Financial Assistance Methods.

(1) Eligible Activities of the SRF.

Funds within the SRF may be used for loans and other authorized forms of financial assistance. Funds may be used for the construction of publicly or privately owned works or facilities, or any work that is an eligible project cost.

(2) Types of Financial Assistance Available for Eligible Water Systems.

(a) Loans.

To qualify for "negative interest" or "principal forgiveness", the system must qualify as a "disadvantaged community". Upon application, the Board will make a case by case determination whether the system is a "disadvantaged community". To be eligible to be considered as a disadvantaged community, the system must be located in a service area or zip code area which has a median adjusted gross income which is less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax Commission from federal individual income tax returns excluding zero exemption returns. Additionally, the Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and other such information as the Board determines relevant to making the decision to recognize the system as a "disadvantaged community".

(i) Hardship Grant Assessment.

The assessment will be calculated based on the procedures and formulas shown in section 6 of this rule.

(ii) Repayment.

Annual repayments of principal, interest and/or Hardship Grant Assessment generally commence not later than one year after project completion. Project completion shall be defined as the date the funded project is capable of operation. Where a project has been phased or segmented, the repayment requirement applies to the completion of individual phases or segments.

The loan must be fully amortized not later than 20 years after project completion. The yearly amount of the principal repayment is set at the discretion of the Board.

(iii) Principal Forgiveness.

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of forgiveness of the principal loan amount. Terms for principal forgiveness will be as determined by Board resolution.

Eligible applicants for "principal forgiveness" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

(iv) Negative Interest Rate.

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of a loan with a negative interest rate, as determined by Board resolution.

Eligible applicants for "negative interest" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

(v) Dedicated Repayment Source and Security.

Loan recipients must establish one or more dedicated sources of revenue for repayment of the loan. As a condition of financial assistance, the applicant must demonstrate a revenue source and security, as required by the Board.

(b) Refinancing Existing Debt Obligations.

The Board may use funds from the SRF to buy or refinance municipal, inter-municipal or interstate agencies, where the initial debt was incurred and construction started after July 1, 1993. Refinanced projects must comply with the requirements imposed by the Safe Drinking Water Act(SDWA) as though they were projects receiving initial financing from the SRF.

(c) Credit Enhancement Agreements and Interest Buy-Down Agreements.

The Board will determine whether a project may receive all or part of a loan, credit enhancement agreement or interest buy-down agreement. To provide security for project obligations, the Board may agree to purchase project obligations of applicants, or make loans to the applicants. The Board may also consider making loans to the applicants to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. The Board may also consider other methods of assistance to applicants to properly enhance the marketability of or security for project obligations.

Interest buy-down agreements may consist of any of the following:

(i) A financing agreement between the Board and applicant whereby a specified sum is loaned to the applicant. The loaned funds shall be placed in a trust account, which shall be used exclusively to reduce the cost of financing for the project.

(ii) A financing agreement between the Board and the applicant whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

(iii) Any other legal method of financing which reduces the annual payment amount on publicly issued bonds. The financing alternative chosen should be the one most economically advantageous for the State and the applicant.

(3) Ineligible Projects.

Projects which are ineligible for financial assistance include:

(a) Any project for a water system in significant non-compliance, as measured by a "not approved" rating, unless the project will resolve all outstanding issues causing the non-compliance.

(b) Any project where the Board determines that the applicant lacks the technical, managerial, or financial capability to achieve or maintain SDWA compliance, unless the Board determines that the financial assistance will allow or cause the system to maintain long-term capability to stay in compliance.

(c) Any project meant to finance the expansion of a drinking water system to supply or attract future population growth. Eligible projects, however, can be designed and funded at a level which will serve the population that a system expects to serve over the useful life of the facility.

(d) Projects which are specifically prohibited from eligibility by Federal guidelines. These include the following:

(i) Dams, or rehabilitation of dams;

(ii) Water rights, unless the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy;

(iii) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located;

(iv) Laboratory fees for monitoring;

(v) Operation and maintenance costs;

(vi) Projects needed mainly for fire protection.

(e) Second home subdivisions, meaning those subdivisions having a majority of non-primary living residents.

R309-705-5. Application and Project Initiation Procedures.

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the

necessary financial, legal and engineering counsel, as deemed acceptable by the Drinking Water Board, to prepare an effective and appropriate financial assistance agreement.

(2) A completed application form and project engineering report, as appropriate, are submitted to the Board.

(3) The staff prepares an engineering, capacity development analysis, and financial feasibility report on the project for presentation to the Board.

(4) The Board "Authorizes" financial assistance for the project on the basis of the feasibility report prepared by the staff. The Board then designates whether a loan, credit enhancement agreement, interest buy-down agreement, or any combination thereof, is to be entered into, and approves the project schedule (see section 7 of this rule).

(5) The applicant must demonstrate public support for the project prior to bonding, as deemed acceptable by the Drinking Water Board.

(6) For financial assistance mechanisms where the applicant's bond is purchased by the Board, the project applicant's bond documentation must include an opinion from recognized bond counsel. Counsel must be experienced in bond matters, and must include an opinion that the drinking water project obligation is a valid and binding obligation of the applicant (see section 8 of this rule). The opinion must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to 11-14-21 of the Utah Code Unannotated. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel, experienced in bond matters, that the drinking water project obligation is a valid and binding obligation of the applicant.

(7) The Board issues a Plan Approval for plans and specifications, if required, and concurs in bid advertisement.

(8) If a project is designated to be financed by a loan or an interest buy-down agreement, an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for eligible project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement, all project funds will be maintained in a separate account, and a quarterly report of project expenditures will be provided to the Board.

Incremental disbursement bonds will be required. Cash draws will be based on a schedule that coincides with the rate at which project related costs are expected to be incurred for the project.

(9) For a revenue bond, a User Charge Ordinance, or water rate structure, must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and/or operation and maintenance. For a general obligation bond, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

(10) A "Private Company" will be required to enter into a Loan Agreement with the Board. The loan agreement will establish the procedures for disbursement of loan proceeds and will set forth the security interests to be granted to the Board by the Applicant to secure the Applicant's repayment obligations.

(a) The Board may require any of the following forms of security interest or additional/other security interests to guarantee repayment of the loan: deed of trust interests in real property, security interests in equipment and water rights, and personal guarantees.

(b) The security requirements wil be established after the Board's staff has reviewed and analysed the Applicants financial condition.

(c) These requirements may vary from project to project at the discretion of the Board

(d) The Applicant will also be required to excute a Promissory Note in the face amount of the loan, payable to the order of the lender, and file a Utah Division of Corporations and Commercial Code Financing Statement, Form UCC-1.

(e) The Board may specify that loan proceeds be disbursed incrementally into an escrow account for expected construction costs. Or it may authorize another acceptable disbursement procedure.

(11) The applicant's contract with its engineer must be submitted to the Board for review to, determine that there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(12) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, validity and quantity of water rights, and adequacy of bidding and contract documents, as required.

(13) A position fidelity bond must be provided for the treasurer or other local staff handling the repayment funds and revenues produced by the applicant's system.

(14) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board shall issue the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and shall notify the applicant to sell the bonds.

(15) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant shall sell the bonds on the open market and the Board of the terms of sale. If a credit enhancement agreement is being utilized, the bonds sold on the open market shall contain the legend required by 73-10c-6(3)(d) of the Utah Code Unannotated. If an interest buy-down agreement is being utilized, the bonds sold on the open market shall bear a legend which makes reference to the interest buy-down agreement and states that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

(16) The applicant shall open bids for the project.

(17) LOAN ONLY - The Board shall give final approval to purchase the bonds and execute the loan contract.

(18) LOAN ONLY - The final closing of the loan is conducted.

(19) A preconstruction conference shall be held.

(20) The applicant shall issue a written notice to proceed to the contractor.

R309-705-6. Applicant Priority System and Selection of Terms of Assistance.

(1) Priority Determination.

The Board may, at its option, modify a project's priority rating based on the following considerations:

(a) The project plans, specifications, contract, financing, etc., of a lesser-rated project are ready for execution.

(b) Available funding.

(c) Acute health risk.

(d) Capacity Development.

The Board will utilize the format shown in Table 1 to prioritize loan applicants.

TABLE 1
Priority System

Deficiency Description	Points Received
Source Quality/Quantity	
Health Risk (select one)	
A. There is evidence that waterborne illnesses have occurred.	25
B. There are reports of illnesses which may be waterborne.	20
C. High potential for waterborne illness exists.	15
D. Moderate potential for waterborne illness	8
E. No evidence of potential health risks	0
Compliance with SDWA (select all that apply)	
A. Source has been determined to be under the influence of surface water.	25
B. System is often out of water due to inadequate source capacity.	20
-or-	
System capacity does not meet the requirements of UPDWR.	10
C. Source has a history of three or more confirmed microbiological violations within the last year.	10
D. Sources are not developed or protected according to UPDWR.	10
E. Source has confirmed MCL chemistry violations within the last year.	10
Total	100

Deficiency Description	Points Available
Treatment	
Health Risk/Compliance with SDWA (select all that apply)	
A. Treatment system cannot consistently meet log removal requirements and/or turbidity standards.	25
B. The required disinfection systems are not installed, are inadequate, or fail to provide adequate water quality.	25
C. Treatment system is subject to impending failure, or has failed.	25
-or-	
Treatment system equipment does not meet demands of UPDWR.	15
-or-	
System equipment is projected to become inadequate without upgrades.	5
Total	75

Deficiency Description	Points Available
Storage	
Health Risk / Compliance with SDWA (select all that apply)	
A. Storage system is subject to impending failure, or has failed.	25
-or-	
System is old, cannot be easily cleaned, or subject to contamination.	15
B. Storage system is inadequate for existing demands.	20
-or-	
Storage system demand exceeds 90% of storage capacity.	10
C. Applicable contact time requirements cannot be met without an upgrade.	15
D. System suffers from low static pressures.	15
Total	75

Deficiency Description	Points Available
Distribution	
Health Risk/Compliance with SDWA (select all that apply)	
A. Distribution system equipment is deteriorated or inadequate for existing demands.	20
-or-	
Distribution system is inadequate to meet 5 year projected demands.	10
B. Applicable disinfectant residual maintenance requirements are not met or high backflow contamination potential exists.	20
C. Project will replace pipe containing unsafe materials (lead, asbestos, etc).	15
D. Minimum dynamic pressure requirements are not met.	10
E. System experiences a heavy leak rate in the distribution lines.	10
Total	75

Priority Rating = (Average Points Received) x (Rate Factor) x (AGI Factor)

Where:
* Rate Factor = (Average System Water Bill/Average State Water Bill)
** AGI Factor = (State Median AGI/System Median AGI)

(2) Financial Assistance Determination. The amount and type of financial assistance offered will be based upon the criteria shown in Table 2. As determined by Board resolution, disadvantaged communities may also receive zero-percent loans, or other financial assistance as described herein.

Effective rate calculation methods will be determined by Board resolution from time to time, using the Revenue Bond Buyer Index (RBBI)as a basis point, the points assigned in Table 2, and a method to reduce the interest rate from a recent RBBI rate down to a potential minimum of zero percent.

TABLE 2
Special Hardship Grant Assessment Rate Reduction Incentives

1. Project will include creation or enhancement of, or compliance with a regionalization plan	25
2. Applicant has, within the last 5 years, developed and implemented a water master plan	25
3. Applicant has a 5-year history of having implemented a replacement or depreciation fund, amounting to 5% of the drinking water budget for O and M, and debt service.	15
4. Applicant has a written emergency response plan.	10
5. Project funding contributed by applicant meets or exceeds 20% of estimated project cost	10
6. Applicant has established a rate structure to encourage water conservation	15
TOTAL POSSIBLE POINTS	100

R309-705-7. Project Authorization.

A project may be "Authorized" for a loan, credit enhancement agreement, or interest buy-down agreement in writing by the Board following submission and favorable review of an application form, engineering report (if required), financial capability assessment and Staff feasibility report.

Once the application submittals are reviewed, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include an evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended (i.e., for a loan, credit enhancement agreement, or interest buy-down agreement).

The Board may authorize a loan for any work or facility to provide water for human consumption and other domestic uses. Generally, work means planning, engineering design, or other

eligible activities defined elsewhere in these rules.

Project Authorization is conditioned upon the availability of funds at the time of loan closing or signing of the credit enhancement, or interest buy-down and upon adherence to the project schedule approved at that time. The Board, at its own discretion, may require the Applicant to enter into a "Commitment Agreement" with the Board prior to execution of final loan documents or closing of the loan. This Commitment Agreement or Binding Commitment may specify date(s) by which the Applicant must complete the requirements set forth in the Project Authorization Letter. The Commitment Agreement shall state that if the Department of Environmental Quality acting through the Drinking Water Board is unable to make the Loan by the Loan Date, this Agreement shall terminate without any liability accuring to the Department or the Applicant hereunder. Also, if the project does not proceed according to the project schedule, the Board may withdraw project Authorization, so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

R309-705-8. Financial Evaluations.

(1) The Board considers it a proper function to assist project applicants in obtaining funding from such financing sources as may be available.

(2) In providing financial assistance in the form of a loan, the Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of recognized municipal bond counsel. Bond counsel must provide an opinion that the bonds are legal and binding under applicable Utah law (including, if applicable, the Utah Municipal Bond Act). For bonds of $150,000 or less the Board will not require this opinion.

(3) In providing financial assistance in the form of a loan, the Board may purchase either taxable or non-taxable bonds; provided that it shall be the general preference of the Board to purchase bonds issued by the applicant only if the bonds are tax exempt. Tax-exempt bonds must be accompanied by a legal opinion of recognized municipal bond counsel to the effect that the Interest and the Hardship Grant Assessment (also interest) on the bonds is exempt from federal income taxation. Such an opinion must be obtained by the applicant in the following situations:

(a) Bonds which are issued to finance a project which will also be financed in part at any time by the proceeds of other bonds which are exempt from federal income taxation.

(b) Bonds which are not subject to the arbitrage rebate provisions of Section 148 of the Internal Revenue Code of 1986 (or successor provision of similar intent), including, without limitation, bonds covered by the "small governmental units" exemption contained in Section 148(f)(4)(c) of the Internal Revenue Code of 1986 (or any successor provision of similar intent) and bonds which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of such bonds.

(4) If more than 25 percent of the project is to serve industry, bond counsel must evaluate the loan to ensure the tax exempt status of the loan fund.

(5) Revenue bonds purchased by the Board shall be secured by a pledge of water system revenues, and it is the general policy of the Board that the pledge of water revenues for the payment of debt service (principal and/or Hardship Grant Assessment) on a particular revenue bond be on a parity with the pledge of those water revenues as security for the debt service payments on all other bonds or other forms of indebtedness which are secured by the water revenues.

(6) If a project is Authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. It is the Board's intent to avoid repayment schedules which would exceed the design life of the project facilities.

(7) Normal engineering and investigation costs incurred by the Department of Environmental Quality (DEQ) or Board during preliminary project investigation and prior to Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the applicant withdraws the Application prior to the Board's Authorization.

If the credit enhancement agreement or interest buy-down agreement does not involve a loan of funds from the Board, then administrative costs will not be charged to the project. However, if the Board Suthorizes a loan for the project, all costs incurred by the DEQ or Board on the project will be charged against the project and paid by the applicant as a part of the total project cost. Generally, this will include all DEQ and Board costs incurred from the beginning of the preliminary investigations through the end of construction and close-out of the project. If the applicant decides not to build the project after the Board has Authorized the project, all costs accrued after the Authorization date will be reimbursed by the applicant to the Board.

(8) The Board shall determine the date on which the scheduled payments of principal, Hardship Grant Assessment, and interest will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system user up to one year of actual use of the project facilities before the first repayment is required.

(9) The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

(10) LOANS AND INTEREST BUY-DOWN AGREEMENTS ONLY - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

(11) The Board will not forgive the applicant of any payment after the payment is due.

(12) The Board will require that a debt service reserve account be established by the applicant at or before the time that the loan is closed. Deposits to that account shall be made at least annually in the amount of one-tenth of the annual payment on the bond(s) purchased by the Board and shall continue until the total amount in the debt service reserve fund is equal to the annual payment. The debt service reserve account shall be continued until the bond is retired. Failure to maintain the reserve account will constitute a technical default on the bond(s).

(13) The Board will require a capital facilities replacement reserve account be established at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of five percent (5%) of the applicant's annual drinking water system budget, including depreciation, unless otherwise specified by the Board at the time of loan authorization, until the loan is repaid. This fund shall not serve as security for the payment of principal or Hardship Grant Assessment on the loan. The applicant shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system. The applicant will not need the consent of the Board prior to making any expenditure from the fund. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed.

(14) If the Board is to purchase a revenue bond, the Board will require that the applicant's water rates be established such that sufficient net revenue will be raised to provide at least 125% (or such other amount as the Board may determine) of the total annual debt service.

(15) A Water Management and Conservation Plan will be required.

R309-705-9. Committal of Funds and Approval of Agreements.

After the Board has approved the plans and specifications by the issuance of a Plan Approval, the loan will be considered by the Board for final approval. The Board will determine whether the agreement is in proper order. The Executive Secretary, or designee, may then execute final approval of the loan or credit enhancement agreement if obligations to the Board or other aspects of the project have not changed significantly since the Board's authorization of the loan or credit enhancement, provided all conditions imposed by the Board have been met. If significant changes have occurred the Board will then review the project and, if satisfied, the Board will then commit funds, approve the signing of the contract, credit enhancement agreement, or interest buy-down agreement, and instruct the Executive Secretary to submit a copy of the signed contract or agreement to the Division of Finance.

R309-705-10. Construction.

The Division of Drinking Water staff may conduct inspections and will report to the applicant. Contract change orders must be properly negotiated with the contractor and approved in writing. Change orders in excess of $10,000 must receive prior written approval by the Executive Secretary before execution. Upon successful completion of the project and recommendation of the applicant's engineer, the applicant will request the Executive Secretary to conduct a final inspection. When the project is complete to the satisfaction of the applicant's engineer, the Executive Secretary and the applicant, written approval will be issued by the Executive Secretary to commence using the project facilities.

R309-705-11. Compliance with Federal Requirements.

(1) Applicants must show the legal, institutional, managerial, and financial capability to construct, operate, and maintain the drinking water system(s) that the project will serve.

(2) As required by Federal Code, applicants may be subject to the following federal requirements:

Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended

Clean Air Act, Pub. L. 84-159, as amended

Coastal Barrier Resources Act, Pub. L. 97-348

Coastal Zone Management Act, Pub. L. 92-583, as amended

Endangered Species Act, Pub. L. 92-583

Environmental Justice, Executive Order 12898

Floodplain Management, Executive Order 11988 as amended by Executive Order 12148

Protection of Wetlands, Executive Order 11990

Farmland Protection Policy Act, Pub. L. 97-98

Fish and Wildlife Coordination Act, Pub. L. 85-624

National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190

National Historic Preservation Act of 1966, PL 89-665, as amended

Safe Drinking Water Act, Pub. L. 93-523, as amended

Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

Age Discrimination Act of 1975, Pub. L. 94-135

Title VI of the Civil Rights Act of 1964, Pub. L. 88-352

Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)

Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)

The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)

Equal Employment Opportunity, Executive Order 11246

Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432

Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

Anti-Lobbying Provisions (40 CFR Part 30)

Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended

Procurement Prohibitions under Section 306 of the Clean Water Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

Debarment and Suspension, Executive Order 12549

Accounting procedures, whereby applicants agree to maintain a separate project account in accordance with Generally Accepted Accounting Standards and Utah State Uniform Accounting requirements

KEY: SDWA, financial assistance, loans
May 16, 2000 **19-4-104**
73-10c

R313. Environmental Quality, Radiation Control.
R313-12. General Provisions.
R313-12-1. Authority.

The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(3) and 19-3-104(6) and Section 63-38-3.

R313-12-2. Purpose and Scope.

It is the purpose of these rules to state such requirements as shall be applied in the use of radiation, radiation machines, and radioactive materials to ensure the maximum protection of the public health and safety to all persons at, or in the vicinity of, the place of use, storage, or disposal. These rules are intended to be consistent with the proper use of radiation machines and radioactive materials. Except as otherwise specifically provided, these rules apply to all persons who receive, possess, use, transfer, own or acquire any source of radiation, provided, however, that nothing in these rules shall apply to any person to the extent such person is subject to regulation by the U.S. Nuclear Regulatory Commission. See also Section R313-12-55.

R313-12-3. Definitions.

As used in these rules, these terms shall have the definitions set forth below. Additional definitions used only in a certain rule will be found in that rule.

"A_1" means the maximum activity of special form radioactive material permitted in a Type A package.

"A_2" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity, and surface contaminated object material permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100 or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Accelerator produced material" means a material made radioactive by a particle accelerator.

"Act" means Utah Radiation Control Act, Title 19, Chapter 3.

"Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

"Adult" means an individual 18 or more years of age.

"Address of use" means the building that is identified on the license and where radioactive material may be received, used or stored.

"Agreement State" means a state with which the United States Nuclear Regulatory Commission has entered into an effective agreement under Section 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

"Airborne radioactive material" means a radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

"Airborne radioactivity area" means: a room, enclosure, or area in which airborne radioactive material exists in concentrations:

(a) In excess of the derived air concentrations (DACs), specified in Rule R313-15, or

(b) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI), or 12 DAC hours.

"As low as reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, using, or storing radioactive material.

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the Department under the Radiation Control Act or Rules.

"Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to one disintegration or transformation per second.

"Bioassay" means the determination of kinds, quantities or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

"Board" means the Radiation Control Board created under Section 19-1-106.

"Byproduct material" means:

(a) a radioactive material, with the exception of special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition.

"Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of the year shall begin in January, and subsequent calendar quarters shall be arranged so that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. The method

observed by the licensee or registrant for determining calendar quarters shall only be changed at the beginning of a year.

"Calibration" means the determination of:

(a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) the strength of a source of radiation relative to a standard.

"CFR" means Code of Federal Regulations.

"Chelating agent" means a chemical ligand that can form coordination compounds in which the ligand occupies more than one coordination position. The agents include beta diketones, certain proteins, amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

"Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

"Committed dose equivalent" ($H_{T,50}$), means the dose equivalent to organs or tissues of reference (T), that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" ($H_{E,50}$), is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

"Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

"Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

"Curie" means a unit of measurement of activity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} disintegrations or transformations per second (dps or tps).

"Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(a) release of property for unrestricted use and termination of the license; or

(b) release of the property under restricted conditions and termination of the license.

"Deep dose equivalent" (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of one centimeter (1000 mg/cm^2).

"Department" means the Utah State Department of Environmental Quality.

"Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

"Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

"Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

"Dose equivalent" (H_T), means the product of the absorbed dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

"Dose limits" means the permissible upper bounds of radiation doses established in accordance with these rules. For purpose of these rules, "limits" is an equivalent term.

"Effective dose equivalent" (H_E), means the sum of the products of the dose equivalent to each organ or tissue (H_T), and the weighting factor (w_T,) applicable to each of the body organs or tissues that are irradiated.

"Embryo/fetus" means the developing human organism from conception until the time of birth.

"Entrance or access point" means an opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

"Executive Secretary" means the executive secretary of the board.

"Explosive material" means a chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

"EXPOSURE" when capitalized, means the quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons, both negatrons and positrons, liberated by photons in a volume element of air having a mass of "dm" are completely stopped in air. The special unit of EXPOSURE is the roentgen (R). See Section R313-12-20 Units of exposure and dose for the SI equivalent. For purposes of these rules, this term is used as a noun.

"Exposure" when not capitalized as the above term, means being exposed to ionizing radiation or to radioactive material. For purposes of these rules, this term is used as a verb.

"EXPOSURE rate" means the EXPOSURE per unit of time, such as roentgen per minute and milliroentgen per hour.

"External dose" means that portion of the dose equivalent received from a source of radiation outside the body.

"Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

"Facility" means the location within one building, vehicle, or under one roof and under the same administrative control

(a) at which the use, processing or storage of radioactive material is or was authorized; or

(b) at which one or more radiation-producing machines or radioactivity-inducing machines are installed or located.

"Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

"Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection

Agency under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

"Gray" (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram.

"Hazardous waste" means those wastes designated as hazardous by the U.S. Environmental Protection Agency rules in 40 CFR Part 261.

"Healing arts" means the disciplines of medicine, dentistry, osteopathy, chiropractic, and podiatry.

"High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of one mSv (0.1 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates. For purposes of these rules, rooms or areas in which diagnostic x-ray systems are used for healing arts purposes are not considered high radiation areas.

"Human use" means the intentional internal or external administration of radiation or radioactive material to human beings.

"Individual" means a human being.

"Individual monitoring" means the assessment of:

(a) dose equivalent, by the use of individual monitoring devices or, by the use of survey data; or

(b) committed effective dose equivalent by bioassay or by determination of the time weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

"Individual monitoring devices" means devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of these rules, individual monitoring equipment and personnel monitoring equipment are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters (TLD's), pocket ionization chambers, and personal air sampling devices.

"Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions applicable to radiation sources.

"Interlock" means a device arranged or connected requiring the occurrence of an event or condition before a second condition can occur or continue to occur.

"Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

"Lens dose equivalent" (LDE) applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

"License" means a license issued by the Executive Secretary in accordance with the rules adopted by the Board.

"Licensee" means a person who is licensed by the Department in accordance with these rules and the Act.

"Licensed or registered material" means radioactive material, received, possessed, used or transferred or disposed of under a general or specific license issued by the Executive Secretary.

"Licensing state" means a state which has been provisionally or finally designated as such by the Conference of Radiation Control Program Directors, Inc., which reviews state regulations to establish equivalency with the Suggested State Regulations and ascertains whether a State has an effective program for control of natural occurring or accelerator produced radioactive material (NARM). The Conference will designate as Licensing States those states with regulations for control of radiation relating to, and an effective program for, the regulatory control of NARM.

"Limits". See "Dose limits".

"Lost or missing source of radiation" means licensed or registered sources of radiation whose location is unknown. This definition includes, but is not limited to, radioactive material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

"Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4.

"Member of the public" means an individual except when that individual is receiving an occupational dose.

"Minor" means an individual less than 18 years of age.

"Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, radiation monitoring and radiation protection monitoring are equivalent terms.

"NARM" means a naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source or special nuclear material.

"NORM" means a naturally occurring radioactive material.

"Natural radioactivity" means radioactivity of naturally occurring nuclides.

"Nuclear Regulatory Commission" (NRC) means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether or not the sources of radiation are in the possession of the licensee, registrant, or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Section R313-32-75, from voluntary participation in medical research programs, or as a member of the public.

"Package" means the packaging together with its radioactive contents as presented for transport.

"Particle accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one MeV.

"Permit" means a permit issued by the Executive Secretary

in accordance with the rules adopted by the Board.

"Permitee" means a person who is permitted by the Department in accordance with these rules and the Act.

"Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or another state or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

"Personnel monitoring equipment," see individual monitoring devices.

"Pharmacist" means an individual licensed by this state to practice pharmacy. See Sections 58-17a-101 through 58-17a-801.

"Physician" means an individual licensed by this state to practice medicine and surgery in all its branches. See Sections 58-67-101 through 58-67-803.

"Practitioner" means an individual licensed by this state in the practice of a healing art. Examples would be, physician, dentist, podiatrist, osteopath, and chiropractor.

"Protective apron" means an apron made of radiation-attenuating materials used to reduce exposure to radiation.

"Public dose" means the dose received by a member of the public from sources of radiation from licensed or registered operations. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Section R313-32-75, or from voluntary participation in medical research programs.

"Pyrophoric material" means any liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (54.4 degrees Celsius) or any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

"Quality factor" (Q) means the modifying factor, listed in Tables 1 and 2 of Section R313-12-20 that is used to derive dose equivalent from absorbed dose.

"Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram

"Radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high speed electrons, high speed protons, and other particles capable of producing ions. For purposes of these rules, ionizing radiation is an equivalent term. Radiation, as used in these rules, does not include non-ionizing radiation, like radiowaves or microwaves, visible, infrared, or ultraviolet light.

"Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates.

"Radiation machine" means a device capable of producing radiation except those devices with radioactive material as the only source of radiation.

"Radiation safety officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection rules and has been assigned such responsibility by the licensee or registrant.

"Radiation source". See "Source of radiation."

"Radioactive material" means a solid, liquid, or gas which emits radiation spontaneously.

"Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

"Radiobioassay". See "Bioassay".

"Registrant" means any person who is registered with respect to radioactive materials or radiation machines with the Executive Secretary or is legally obligated to register with the Executive Secretary pursuant to these rules and the Act.

"Registration" means registration with the Department in accordance with the rules adopted by the Board.

"Regulations of the U.S. Department of Transportation" means 49 CFR 100 through 189.

"Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 sievert (Sv).

"Research and development" means:

(a) theoretical analysis, exploration, or experimentation; or

(b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of Rule R313-15.

"Restricted area" means an area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. A "Restricted area" does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

"Roentgen" (R) means the special unit of EXPOSURE. One roentgen equals 2.58×10^{-4} coulombs per kilogram of air. See EXPOSURE.

"Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

"Shallow dose equivalent" (H_s) which applies to the external exposure of the skin or an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (seven mg per cm^2), averaged over an area of one square centimeter.

"SI" means an abbreviation of the International System of Units.

"Sievert" (Sv) means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

"Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

"Source container" means a device in which sealed sources are transported or stored.

"Source material" means:

(a) uranium or thorium, or any combination thereof, in any physical or chemical form, or

(b) ores that contain by weight one-twentieth of one percent (0.05 percent), or more of, uranium, thorium, or any combination of uranium and thorium. Source material does not include special nuclear material.

"Source material milling" means any activity that results in the production of byproduct material as defined by (b) of "byproduct material".

"Source of radiation" means any radioactive material, or a device or equipment emitting or capable of producing ionizing radiation.

"Special form radioactive material" means radioactive material which satisfies the following conditions:

(a) it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) the piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and

(c) it satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission in 10 CFR 71.75. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of Section 71.4 in effect on March 31, 1996, (see 10 CFR 71 revised January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

"Special nuclear material" means:

(a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and other material that the U.S. Nuclear Regulatory Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) any material artificially enriched by any of the foregoing but does not include source material.

"Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams or a combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula:

((175(Grams contained U-235)/350) + (50(Grams U-233/200) + (50(Grams Pu)/200)) is equal to one.

"Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examinations and measurements of levels of radiation or concentrations of radioactive material present.

"Test" means the process of verifying compliance with an applicable rule.

"These rules" means "Utah Radiation Control Rules".

"Total effective dose equivalent" (TEDE) means the sum of the deep dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

"Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in Subsection R313-15-1107(1)(f).

"U.S. Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c), and (d) of Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, effective January 19, 1975 known as the Energy Reorganization Act of 1974, and retransferred to the Secretary of Energy pursuant to section 301(a) of Public Law 95-91, August 14, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977 known as the Department of Energy Organization Act.

"Unrefined and unprocessed ore" means ore in its natural form prior to processing, like grinding, roasting, beneficiating or refining.

"Unrestricted area" means an area, to which access is neither limited nor controlled by the licensee or registrant. For purposes of these rules, "uncontrolled area" is an equivalent term.

"Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-Level Radioactive Waste Policy Act, P.L. 96-573, as amended by P.L. 99-240, effective January 15, 1986; that is, radioactive waste:

(a) not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in Section 11e.(2) of the Atomic Energy Act (uranium or thorium tailings and waste) and

(b) classified by the U.S. Nuclear Regulatory Commission as low-level radioactive waste consistent with existing law and in accordance with (a) above.

"Waste collector licensees" means persons licensed to receive and store radioactive wastes prior to disposal or persons

licensed to dispose of radioactive waste.

"Week" means seven consecutive days starting on Sunday.

"Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knees.

"Worker" means an individual engaged in work under a license or registration issued by the Executive Secretary and controlled by a licensee or registrant, but does not include the licensee or registrant.

"Working level" (WL), means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy. The short-lived radon daughters are, for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon 220: polonium-216, lead-212, bismuth-212, and polonium-212.

"Working level month" (WLM), means an exposure to one working level for 170 hours. 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

"Year" means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the decision to make the change is made not later than December 31 of the previous year. If a licensee or registrant changes in a year, the licensee or registrant shall assure that no day is omitted or duplicated in consecutive years.

R313-12-20. Units of Exposure and Dose.

(1) As used in these rules, the unit of EXPOSURE is the coulomb per kilogram (C per kg). One roentgen is equal to 2.58×10^{-4} coulomb per kilogram of air.

(2) As used in these rules, the units of dose are:

(a) Gray (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram. One gray equals 100 rad.

(b) Rad is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram. One rad equals 0.01 Gy.

(c) Rem is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 Sv.

(d) Sievert (Sv) is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

(3) As used in these rules, the quality factors for converting absorbed dose to dose equivalent are shown in Table 1.

TABLE 1

Quality Factors and Absorbed Dose Equivalencies

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent
X, gamma, or beta radiation and high-speed electrons	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High energy protons	10	0.1

For the column in Table 1 labeled "Absorbed Dose Equal to a Unit Dose Equivalent", the absorbed dose in rad is equal to one rem or the absorbed dose in gray is equal to one Sv.

(4) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, as provided in Subsection R313-12-20(3), 0.01 Sv of neutron radiation of unknown energies may, for purposes of these rules, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from Table 2 to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

TABLE 2

Mean Quality Factors, Q, and Fluence Per Unit Dose Equivalent for Monoenergetic Neutrons

	Neutron Energy Mev	Quality Factor Q	Fluence per Unit Dose Equivalent neutrons cm^{-2} rem^{-1}	Fluence per Unit Dose Equivalent neutrons cm^{-2} Sv^{-1}
thermal	2.5×10^{-8}	2	980×10^6	980×10^8
	1×10^{-7}	2	980×10^6	980×10^8
	1×10^{-6}	2	810×10^6	810×10^8
	1×10^{-5}	2	810×10^6	810×10^8
	1×10^{-4}	2	840×10^6	840×10^8
	1×10^{-3}	2	980×10^6	980×10^8
	1×10^{-2}	2.5	1010×10^6	1010×10^8
	1×10^{-1}	7.5	170×10^6	170×10^8
	5×10^{-1}	11	39×10^6	39×10^8
	1	11	27×10^6	27×10^8
	2.5	9	29×10^6	29×10^8
	5	8	23×10^6	23×10^8
	7	7	24×10^6	24×10^8
	10	6.5	24×10^6	24×10^8
	14	7.5	17×10^6	17×10^8
	20	8	16×10^6	16×10^8
	40	7	14×10^6	14×10^8
	60	5.5	16×10^6	16×10^8
	1×10^2	4	20×10^6	20×10^8
	2×10^2	3.5	19×10^6	19×10^8
	3×10^2	3.5	16×10^6	16×10^8
	4×10^2	3.5	14×10^6	14×10^8

For the column in Table 2 labeled "Quality Factor", the values of Q are at the point where the dose equivalent is maximum in a 30 cm diameter cylinder tissue-equivalent phantom.

For the columns in Table 2 labeled "Fluence per Unit Dose Equivalent", the values are for monoenergetic neutrons incident normally on a 30 cm diameter cylinder tissue equivalent phantom.

R313-12-40. Units of Radioactivity.

For purposes of these rules, activity is expressed in the SI unit of becquerel (Bq), or in the special unit of curie (Ci), or their multiples, or disintegrations or transformations per unit of time.

(1) One becquerel (Bq) equals one disintegration or transformation per second.

(2) One curie (Ci) equals 3.7×10^{10} disintegrations or transformations per second, which equals 3.7×10^{10} becquerel, which equals 2.22×10^{12} disintegrations or transformations per minute.

R313-12-51. Records.

(1) A licensee or registrant shall maintain records showing the receipt, transfer, and disposal of all sources of radiation.

(2) Prior to license termination, each licensee authorized to possess radioactive material with a half-life greater than 120 days, in an unsealed form, may forward the following records to the Executive Secretary:

(a) records of disposal of licensed material made under Sections R313-15-1002 (including burials authorized before January 28, 1981), R313-15-1003, R313-15-1004, and R313-15-1005; and

(b) records required by Subsection R313-15-1103(2)(d).

NOTE: 10 CFR 20.304 permitted burial of small quantities of licensed materials in soil before January 28, 1981, without specific U.S. Nuclear Regulatory Commission authorization. See 20.304 contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1981.

(3) If licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), each licensee authorized to possess radioactive material, with a half-life greater than 120 days, in an unsealed form, shall transfer the following records to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated:

(a) records of disposal of licensed material made under Sections R313-15-1002 (including burials authorized before January 28, 1981), R313-15-1003, R313-15-1004, and R313-15-1005; and

(b) records required by Subsection R313-15-1103(2)(d).

(4) Prior to license termination, each licensee may forward the records required by Subsection R313-22-35(7) to the Executive Secretary.

(5) Additional records requirements are specified elsewhere in these rules.

R313-12-52. Inspections.

(1) A licensee or registrant shall afford representatives of the Executive Secretary, at reasonable times, opportunity to inspect sources of radiation and the premises and facilities wherein those sources of radiation are used or stored.

(2) A licensee or registrant shall make available to representatives of the Executive Secretary for inspection, upon reasonable notice, records maintained pursuant to these rules.

R313-12-53. Tests.

(1) A licensee or registrant shall perform upon instructions from a representative of the Board or the Executive Secretary or shall permit the representative to perform reasonable tests as the representative deems appropriate or necessary including, but not limited to, tests of:

(a) sources of radiation;

(b) facilities wherein sources of radiation are used or stored;

(c) radiation detection and monitoring instruments; and

(d) other equipment and devices used in connection with utilization or storage of licensed or registered sources of radiation.

R313-12-54. Additional Requirements.

The Board may, by rule, or order, impose upon a licensee or registrant requirements in addition to those established in these rules that it deems appropriate or necessary to minimize any danger to public health and safety or the environment.

R313-12-55. Exemptions.

(1) The Board may, upon application or upon its own initiative, grant exemptions or exceptions from the requirements of these rules as it determines are authorized by law and will not result in undue hazard to public health and safety or the environment.

(2) U.S. Department of Energy contractors or subcontractors and U.S. Nuclear Regulatory Commission contractors or subcontractors operating within this state are exempt from these rules to the extent that the contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation. The following contractor categories are included:

(a) prime contractors performing work for the U.S. Department of Energy at U.S. Government-owned or controlled sites, including the transportation of sources of radiation to or from the sites and the performance of contract services during temporary interruptions of the transportation;

(b) prime contractors of the U.S. Department of Energy performing research in, or development, manufacture, storage, testing or transportation of, atomic weapons or components thereof;

(c) prime contractors of the U.S. Department of Energy using or operating nuclear reactors or other nuclear devices in a United States Government-owned vehicle or vessel; and

(d) any other prime contractor or subcontractor of the U.S. Department of Energy or of the U.S. Nuclear Regulatory Commission when the state and the U.S. Nuclear Regulatory Commission jointly determine (i) that the exemption of the prime contractor or subcontractor is authorized by law; and (ii) that under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

R313-12-70. Impounding.

Sources of radiation shall be subject to impounding pursuant to Section 19-3-111. Persons who have a source of radiation impounded are subject to fees established in accordance with the Legislative Appropriations Act for the actual cost of the management and oversight activities performed by representatives of the Executive Secretary.

R313-12-100. Prohibited Uses.

(1) A hand-held fluoroscopic screen using x-ray equipment shall not be used unless it has been listed in the Registry of Sealed Source and Devices or accepted for certification by the U.S. Food and Drug Administration, Center for Devices and Radiological Health.

(2) A shoe-fitting fluoroscopic device shall not be used.

R313-12-110. Communications.

All communications and reports concerning these rules, and applications filed thereunder, should be addressed to the Division of Radiation Control, P.O. Box 144850, 168 North

1950 West, Salt Lake City, Utah 84114-4850.

KEY: definitions, units, inspections, exemptions
September 14, 2001 19-3-104
Notice of Continuation July 23, 2001 19-3-108

R313. Environmental Quality, Radiation Control.
R313-15. Standards for Protection Against Radiation.
R313-15-1. Purpose, Authority and Scope.

(1) Rule R313-15 establishes standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses issued by the Executive Secretary. These rules are issued pursuant to Sections 19-3-104(3) and 19-3-104(6).

(2) The requirements of Rule R313-15 are designed to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in Rule R313-15. However, nothing in Rule R313-15 shall be construed as limiting actions that may be necessary to protect health and safety.

(3) Except as specifically provided in other sections of these rules, Rule R313-15 applies to persons licensed or registered by the Executive Secretary to receive, possess, use, transfer, or dispose of sources of radiation. The limits in Rule R313-15 do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with Section R313-32-75, or to exposure from voluntary participation in medical research programs.

R313-15-2. Definitions.

"Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference.

"Air-purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

"Assigned protection factor" (APF) means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

"Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

"Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than ten days, for Class W, Weeks, from ten to 100 days , and for Class Y, Years, of greater than 100 days. For purposes of these rules, "lung class" and "inhalation class" are equivalent terms.

"Constraint (dose constraint)" in accordance with 10 CFR 20.1003, 2001 ed., means a value above which specified licensee actions are required.

"Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

"Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

"Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference.

"Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

"Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

"Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

"Filtering facepiece" (dust mask) means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

"Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

"Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

"Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

"Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

"Inhalation class", refer to "Class".

"Labeled package" means a package labeled with a

Radioactive White I, Yellow II, or Yellow III label as specified in U.S. Department of Transportation regulations 49 CFR 172.403 and 49 CFR 172.436 through 440, 2000 ed. Labeling of packages containing radioactive materials is required by the U.S. Department of Transportation if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by U.S. Department of Transportation regulations 49 CFR 173.403(m) and (w) and 49 CFR 173.421 through 424, 2000 ed.

"Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.

"Lung class", refer to "Class".

"Negative pressure respirator" (tight fitting) means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

"Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, "deterministic effect" is an equivalent term.

"Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

"Positive pressure respirator" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

"Powered air-purifying respirator" (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

"Pressure demand respirator" means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

"Qualitative fit test" (QLFT) means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

"Quantitative fit test" (QNFT) means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

"Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

"Reference Man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of the Reference Man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

"Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

"Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

"Self-contained breathing apparatus" (SCBA) means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

"Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these rules, "probabilistic effect" is an equivalent term.

"Supplied-air respirator" (SAR) or airline respirator means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

"Tight-fitting facepiece" means a respiratory inlet covering that forms a complete seal with the face.

"User seal check" (fit check) means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

"Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of five Gy (500 rad) in one hour at one meter from a radiation source or one meter from any surface that the radiation penetrates.

"Weighting factor" w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

TABLE

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30(1)
Whole Body	1.00(2)

(1) 0.30 results from 0.06 for each of five "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.
(2) For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, w_T = 1.0, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

R313-15-3. Implementation.

(1) Any existing license or registration condition that is more restrictive than Rule R313-15 remains in force until there is an amendment or renewal of the license or registration.

(2) If a license or registration condition exempts a licensee or registrant from a provision of Rule R313-15 in effect on or before January 1, 1994, it also exempts the licensee or registrant from the corresponding provision of Rule R313-15.

(3) If a license or registration condition cites provisions of Rule R313-15 in effect prior to January 1, 1994, which do not correspond to any provisions of Rule R313-15, the license or

registration condition remains in force until there is an amendment or renewal of the license or registration that modifies or removes this condition.

R313-15-101. Radiation Protection Programs.

(1) Each licensee or registrant shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of Rule R313-15. See Section R313-15-1102 for recordkeeping requirements relating to these programs.

(2) The licensee or registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA).

(3) The licensee or registrant shall, at intervals not to exceed 12 months, review the radiation protection program content and implementation.

(4) To implement the ALARA requirements of Subsection R313-15-101(2), and notwithstanding the requirements in Section R313-15-301, a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its decay products, shall be established by licensees or registrants such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 0.1 mSv (0.01 rem) per year from these emissions. If a licensee or registrant subject to this requirement exceeds this dose constraint, the licensee or registrant shall report the exceedance as provided in Section R313-15-1203 and promptly take appropriate corrective action to ensure against recurrence.

R313-15-201. Occupational Dose Limits for Adults.

(1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to Section R313-15-206, to the following dose limits:

(a) An annual limit, which is the more limiting of:

(i) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or

(ii) The sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).

(b) The annual limits to the lens of the eye, to the skin, and to the extremities which are:

(i) A lens dose equivalent of 0.15 Sv (15 rem), and

(ii) A shallow dose equivalent of 0.50 Sv (50 rem) to the skin or to any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See Subsections R313-15-206(5)(a) and R313-15-206(5)(b).

(3) The assigned deep dose equivalent and shallow dose equivalent shall be for the part of the body receiving the highest exposure.

(a) The deep dose equivalent, lens dose equivalent and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable; or

(b) When a protective apron is worn while working with medical fluoroscopic equipment and monitoring is conducted as specified in Subsection R313-15-502(1)(d), the effective dose equivalent for external radiation shall be determined as follows:

(i) When only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in Subsection R313-15-201(1), the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation; or

(ii) When individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in Table I of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference, and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See Section R313-15-1107.

(5) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to ten milligrams in a week in consideration of chemical toxicity. See footnote 3, of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference.

(6) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. See Subsection R313-15-205(5).

R313-15-202. Compliance with Requirements for Summation of External and Internal Doses.

(1) If the licensee or registrant is required to monitor pursuant to both Subsections R313-15-502(1) and R313-15-502(2), the licensee or registrant shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee or registrant is required to monitor only pursuant to Subsection R313-15-502(1) or only pursuant to Subsection R313-15-502(2), then summation is not required to demonstrate compliance with the dose limits. The licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses pursuant to Subsections R313-15-202(2), R313-15-202(3) and R313-15-202(4). The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(2) Intake by Inhalation. If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of

the following, does not exceed unity:

(a) The sum of the fractions of the inhalation ALI for each radionuclide, or

(b) The total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000, or

(c) The sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T, and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than ten percent of the maximum weighted value of $H_{T,50}$, that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.

(3) Intake by Oral Ingestion. If the occupationally exposed individual receives an intake of radionuclides by oral ingestion greater than ten percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

(4) Intake through Wounds or Absorption through Skin. The licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be evaluated or accounted for pursuant to Subsection R313-15-202(4).

R313-15-203. Determination of External Dose from Airborne Radioactive Material.

(1) Licensees or registrants shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, lens dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See footnotes 1 and 2 of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference.

(2) Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

R313-15-204. Determination of Internal Exposure.

(1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee or registrant shall, when required pursuant to Section R313-15-502, take suitable and timely measurements of:

(a) Concentrations of radioactive materials in air in work areas; or

(b) Quantities of radionuclides in the body; or

(c) Quantities of radionuclides excreted from the body; or

(d) Combinations of these measurements.

(2) Unless respiratory protective equipment is used, as provided in Section R313-15-703, or the assessment of intake is based on bioassays, the licensee or registrant shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(3) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee or registrant may:

(a) Use that information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document that information in the individual's record; and

(b) Upon prior approval of the Executive Secretary, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and

(c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference.

(4) If the licensee or registrant chooses to assess intakes of Class Y material using the measurements given in Subsections R313-15-204(1)(b) or R313-15-204(1)(c), the licensee or registrant may delay the recording and reporting of the assessments for periods up to seven months, unless otherwise required by Section R313-15-1202 or Section R313-15-1203. This delay permits the licensee or registrant to make additional measurements basic to the assessments.

(5) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

(a) The sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y, from Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference, for each radionuclide in the mixture; or

(b) The ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(6) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(7) When a mixture of radionuclides in air exists, a licensee or registrant may disregard certain radionuclides in the mixture if:

(a) The licensee or registrant uses the total activity of the mixture in demonstrating compliance with the dose limits in Section R313-15-201 and in complying with the monitoring requirements in Subsection R313-15-502(2), and

(b) The concentration of any radionuclide disregarded is less than ten percent of its DAC, and

(c) The sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30 percent.

(8) When determining the committed effective dose equivalent, the following information may be considered:

(a) In order to calculate the committed effective dose equivalent, the licensee or registrant may assume that the inhalation of one ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on

the committed effective dose equivalent.

(b) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 0.50 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem), that is, the stochastic ALI, is listed in parentheses in Table I of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference. The licensee or registrant may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee or registrant uses the stochastic ALI, the licensee or registrant shall also demonstrate that the limit in Subsection R313-15-201(1)(a)(ii) is met.

R313-15-205. Determination of Prior Occupational Dose.

(1) For each individual likely to receive, in a year, an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall:

(a) Determine the occupational radiation dose received during the current year; and

(b) Attempt to obtain the records of cumulative occupational radiation dose. A licensee or registrant may accept, as the record of cumulative radiation dose, an up-to-date form DRC-05 or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant.

(2) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:

(a) The internal and external doses from all previous planned special exposures; and

(b) All doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

(3) In complying with the requirements of Subsection R313-15-205(1), a licensee or registrant may:

(a) Accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; and

(b) Obtain reports of the individual's dose equivalents from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, other electronic media or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(4) The licensee or registrant shall record the exposure history, as required by Subsection R313-15-205(1), on form DRC-05, or other clear and legible record, of all the information required on that form.

(a) The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing form DRC-05 or equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on form DRC-05 or equivalent indicating the periods of time for which data are not available.

(b) For the purpose of complying with this requirement, licensees or registrants are not required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed pursuant to the rules in Rule R313-15 in effect before January 1, 1994. Further, occupational exposure histories obtained and recorded on form DRC-05 or equivalent before January 1, 1994, would not have included effective dose equivalent, but may be used in the absence of specific information on the intake of radionuclides by the individual.

(5) If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume:

(a) In establishing administrative controls under Subsection R313-15-201(6) for the current year, that the allowable dose limit for the individual is reduced by 12.5 mSv (1.25 rem) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

(b) That the individual is not available for planned special exposures.

(6) The licensee or registrant shall retain the records on form DRC-05 or equivalent until the Executive Secretary terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain records used in preparing form DRC-05 or equivalent for three years after the record is made.

R313-15-206. Planned Special Exposures.

A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in Section R313-15-201 provided that each of the following conditions is satisfied:

(1) The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the dose estimated to result from the planned special exposure are unavailable or impractical.

(2) The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.

(3) Before a planned special exposure, the licensee or registrant ensures that each individual involved is:

(a) Informed of the purpose of the planned operation; and

(b) Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(c) Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(4) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant ascertains

prior doses as required by Subsection R313-15-205(2) during the lifetime of the individual for each individual involved.

(5) Subject to Subsection R313-15-201(2), the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

(a) The numerical values of any of the dose limits in Subsection R313-15-201(1) in any year; and

(b) Five times the annual dose limits in Subsection R313-15-201(1) during the individual's lifetime.

(6) The licensee or registrant maintains records of the conduct of a planned special exposure in accordance with Section R313-15-1106 and submits a written report in accordance with Section R313-15-1204.

(7) The licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual pursuant to Subsection R313-15-201(1) but shall be included in evaluations required by Subsections R313-15-206(4) and R313-15-206(5).

R313-15-207. Occupational Dose Limits for Minors.

The annual occupational dose limits for minors are ten percent of the annual occupational dose limits specified for adult workers in Section R313-15-201.

R313-15-208. Dose to an Embryo/Fetus.

(1) The licensee or registrant shall ensure that the dose equivalent to the embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed five mSv (0.5 rem). See Section R313-15-1107 for recordkeeping requirements.

(2) The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in Subsection R313-15-208(1).

(3) The dose equivalent to an embryo/fetus is the sum of:

(a) The dose equivalent to the embryo/fetus resulting from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman; and

(b) The dose equivalent that is most representative of the dose equivalent to the embryo/fetus from external radiation, that is, in the mother's lower torso region.

(i) If multiple measurements have not been made, assignment of the highest deep dose equivalent for the declared pregnant woman shall be the dose equivalent to the embryo/fetus, in accordance with Subsection R313-15-201(3); or

(ii) If multiple measurements have been made, assignment of the deep dose equivalent for the declared pregnant woman from the individual monitoring device which is most representative of the dose equivalent to the embryo/fetus shall be the dose equivalent to the embryo fetus. Assignment of the highest deep dose equivalent for the declared pregnant woman to the embryo/fetus is not required unless that dose equivalent is also the most representative deep dose equivalent for the region of the embryo/fetus.

(4) If the dose equivalent to the embryo/fetus is found to have exceeded five mSv (0.5 rem) or is within 0.5 mSv (0.05 rem) of this dose by the time the woman declares the pregnancy to the licensee or registrant, the licensee or registrant shall be deemed to be in compliance with Subsection R313-15-208(1) if the additional dose equivalent to the embryo/fetus does not exceed 0.50 mSv (0.05 rem) during the remainder of the pregnancy.

R313-15-301. Dose Limits for Individual Members of the Public.

(1) Each licensee or registrant shall conduct operations so that:

(a) Except as provided in Subsection R313-15-301(1)(c), the total effective dose equivalent to individual members of the public from the licensed or registered operation does not exceed one mSv (0.1 rem) in a year, exclusive of the dose contribution from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Section R313-32-75, from voluntary participation in medical research programs, and from the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with Section R313-15-1003; and

(b) The dose in any unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with Section R313-32-75, does not exceed 0.02 mSv (0.002 rem) in any one hour; and

(c) The total effective dose equivalent to individual members of the public from infrequent exposure to radiation from radiation machines does not exceed 5 mSv (0.5 rem) in a year.

(2) If the licensee or registrant permits members of the public to have access to controlled areas, the limits for members of the public continue to apply to those individuals.

(3) A licensee, registrant, or an applicant for a license or registration may apply for prior Executive Secretary authorization to operate up to an annual dose limit for an individual member of the public of five mSv (0.5 rem). This application shall include the following information:

(a) Demonstration of the need for and the expected duration of operations in excess of the limit in Subsection R313-15-301(1); and

(b) The licensee's or registrant's program to assess and control dose within the five mSv (0.5 rem) annual limit; and

(c) The procedures to be followed to maintain the dose ALARA.

(4) The Executive Secretary may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.

R313-15-302. Compliance with Dose Limits for Individual Members of the Public.

(1) The licensee or registrant shall make or cause to be made surveys of radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to

unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in Section R313-15-301.

(2) A licensee or registrant shall show compliance with the annual dose limit in Section R313-15-301 by:

(a) Demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(b) Demonstrating that:

(i) The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in Table II of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference; and

(ii) If an individual were continuously present in an unrestricted area, the dose from external sources would not exceed 0.02 mSv (0.002 rem) in an hour and 0.50 mSv (0.05 rem) in a year.

(3) Upon approval from the Executive Secretary, the licensee or registrant may adjust the effluent concentration values in Appendix B, Table II of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference, for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as, aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical form.

R313-15-401. Radiological Criteria for License Termination - General Provisions.

(1) The criteria in Sections R313-15-401 through R313-15-406 apply to the decommissioning of facilities licensed under Rules R313-22 and R313-25, as well as other facilities subject to the Board's jurisdiction under the Act. For low-level waste disposal facilities (Rule R313-25), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities.

(2) The criteria in Sections R313-15-401 through R313-15-406 do not apply to sites which:

(a) Have been decommissioned prior to the effective date of the rule in accordance with criteria approved by the Executive Secretary;

(b) Have previously submitted and received Executive Secretary approval on a license termination plan or decommissioning plan; or

(c) Submit a sufficient license termination plan or decommissioning plan before the effective date of the rule with criteria approved by the Executive Secretary.

(3) After a site has been decommissioned and the license terminated in accordance with the criteria in Sections R313-15-401 through R313-15-406, the Executive Secretary will require additional cleanup only if, based on new information, the Executive Secretary determines that the criteria in Sections R313-15-401 through R313-15-406 was not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

(4) When calculating the total effective dose equivalent to the average member of the critical group, the licensee shall determine the peak annual total effective dose equivalent dose expected within the first 1000 years after decommissioning.

R313-15-402. Radiological Criteria for Unrestricted Use.

A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a total effective dose equivalent to an average member of the critical group that does not exceed 0.25 mSv (0.025 rem) per year, including no greater than 0.04 mSv (0.004 rem) committed effective dose equivalent or total effective dose equivalent to an average member of the critical group from groundwater sources, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Determination of the levels which are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

R313-15-403. Criteria for License Termination Under Restricted Conditions.

A site will be considered acceptable for license termination under restricted conditions if:

(1) The licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of Section R313-15-402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels which are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal; and

(2) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem)per year; and

(3) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are:

(a) Funds placed into an account segregated from the licensee's assets outside the licensee's administrative control as described in Subsection R313-22-35(6)(a);

(b) Surety method, insurance, or other guarantee method as described in Subsection R313-22-35(6)(b);

(c) A statement of intent in the case of Federal, State, or local Government licensees, as described in Subsection R313-22-35(6)(d); or

(d) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity; and

(4) The licensee has submitted a decommissioning plan or license termination plan to the Executive Secretary indicating the licensee's intent to decommission in accordance with Subsection R313-22-36(4) and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the license termination plan or decommissioning plan how the advice of individuals and

institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice;

(a) Licensees proposing to decommission by restricting use of the site shall seek advice from such affected parties regarding the following matters concerning the proposed decommissioning:

(i) Whether provisions for institutional controls proposed by the licensee;

(A) Will provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem) total effective dose equivalent per year;

(B) Will be enforceable; and

(C) Will not impose undue burdens on the local community or other affected parties; and

(ii) Whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site; and

(b) In seeking advice on the issues identified in Subsection R313-15-403(4)(a), the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(5) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group is as low as reasonably achievable and would not exceed either:

(a) one mSv (0.1 rem) per year; or

(b) five mSv (0.5 rem) per year provided the licensee:

(i) Demonstrates that further reductions in residual radioactivity necessary to comply with the one mSv (0.1 rem) per year value of Subsection R313-15-403(5)(a) are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(ii) Makes provisions for durable institutional controls; and

(iii) Provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every five years to assure that the institutional controls remain in place as necessary to meet the criteria of Subsection R313-15-403(2) and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in Subsection R313-15-403(3).

R313-15-404. Alternate Criteria for License Termination.

(1) The Executive Secretary may terminate a license using alternative criteria greater than the dose criterion of Section R313-15-402, and Subsections R313-15-403(2) and R313-15-403(4)(a)(i)(A), if the licensee:

(a) Provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the one mSv (0.1 rem) per year limit of Subsection R313-15-301(1)(a), by submitting an analysis of possible sources of exposure; and

(b) Has employed, to the extent practical, restrictions on site use according to the provisions of Section R313-15-403 in minimizing exposures at the site; and

(c) Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal; and

(d) Has submitted a decommissioning plan or license termination plan to the Executive Secretary indicating the licensee's intent to decommission in accordance with Subsection R313-22-36(4), and specifying that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan or license termination plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning; and

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(2) The use of alternate criteria to terminate a license requires the approval of the Executive Secretary after consideration of recommendations from the Division's staff, comments provided by federal, state and local governments, and any public comments submitted pursuant to Section R313-15-405.

R313-15-405. Public Notification and Public Participation.

Upon the receipt of a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site pursuant to Sections R313-15-403 or R313-15-404, or whenever the Executive Secretary deems such notice to be in the public interest, the Executive Secretary shall:

(1) Notify and solicit comments from:

(a) Local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(b) Federal, state and local governments for cases where the licensee proposes to release a site pursuant to Section R313-15-404.

(2) Publish a notice in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

R313-15-406. Minimization of Contamination.

Applicants for licenses, other than renewals, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of waste.

R313-15-501. Surveys and Monitoring - General.

(1) Each licensee or registrant shall make, or cause to be made, surveys that:

(a) Are necessary for the licensee or registrant to comply with Rule R313-15; and

(b) Are necessary under the circumstances to evaluate:

(i) The magnitude and the extent of radiation levels; and

(ii) Concentrations or quantities of radioactive material; and

(iii) The potential radiological hazards.

(2) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated at intervals not to exceed 12 months for the radiation measured, except when a more frequent interval is specified in another applicable part of these rules or a license condition.

(3) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with Section R313-15-201, with other applicable provisions of these rules, or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(4) The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

R313-15-502. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose.

Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of Rule R313-15. As a minimum:

(1) Each licensee or registrant shall monitor occupational exposure to radiation from licensed, unlicensed, and registered radiation sources under the control of the licensee and shall supply and require the use of individual monitoring devices by:

(a) Adults likely to receive, in one year from sources external to the body, a dose in excess of ten percent of the limits in Subsection R313-15-201(1); and

(b) Minors likely to receive, in one year, from radiation sources external to the body, a deep dose equivalent in excess of one mSv (0.1 rem), a lens dose equivalent in excess of 1.5 mSv (0.15 rem), or a shallow dose equivalent to the skin or to the extremities in excess of five mSv (0.5 rem); and

(c) Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of one mSv (0.1 rem); and

(d) Individuals entering a high or very high radiation area; and

(e) Individuals working with medical fluoroscopic equipment.

(i) An individual monitoring device used for the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located under the protective apron at the waist.

(A) If an individual monitoring device worn by a declared pregnant woman has a monthly reported dose equivalent value in excess of 0.5 mSv (50 mrem), the value to be used for determining the dose to the embryo/fetus, pursuant to Subsection R313-15-208(3)(a) for radiation from medical fluoroscopy, may be the value reported by the individual monitoring device worn at the waist underneath the protective apron which has been corrected for the potential overestimation of dose recorded by the monitoring device because of the overlying tissue of the pregnant individual. This correction shall be performed by a radiation safety officer of an institutional radiation safety committee, a qualified expert approved by the Board, or a representative of the Executive Secretary.

(ii) An individual monitoring device used for lens dose equivalent shall be located at the neck, or an unshielded location closer to the eye, outside the protective apron.

(iii) When only one individual monitoring device is used to determine the effective dose equivalent for external radiation pursuant to Subsection R313-15-201(3)(b), it shall be located at the neck outside the protective apron. When a second individual monitoring device is used, for the same purpose, it shall be located under the protective apron at the waist. Note: The second individual monitoring device is required for a declared pregnant woman.

(2) Each licensee or registrant shall monitor, to determine compliance with Section R313-15-204, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(a) Adults likely to receive, in one year, an intake in excess of ten percent of the applicable ALI(s) in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference; and

(b) Minors likely to receive, in one year, a committed effective dose equivalent in excess of one mSv (0.1 rem); and

(c) Declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of one mSv (0.1 rem).

Note: All of the occupational doses in Section R313-15-201 continue to be applicable to the declared pregnant worker

as long as the embryo/fetus dose limit is not exceeded.

R313-15-503. Location of Individual Monitoring Devices.

Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with Subsection R313-15-502(1) wear individual monitoring devices as follows:

(1) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar).

(2) An individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located at the waist under any protective apron being worn by the woman.

(3) An individual monitoring device used for monitoring the lens dose equivalent, to demonstrate compliance with Subsection R313-15-201(1)(b)(i), shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye.

(4) An individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with Subsection R313-15-201(1)(b)(ii), shall be worn on the extremity likely to receive the highest exposure. Each individual monitoring device shall be oriented to measure the highest dose to the extremity being monitored.

R313-15-601. Control of Access to High Radiation Areas.

(1) The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(a) A control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of one mSv (0.1 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates; or

(b) A control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(c) Entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by Subsection R313-15-601(1) for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(3) The licensee or registrant may apply to the Executive Secretary for approval of alternative methods for controlling access to high radiation areas.

(4) The licensee or registrant shall establish the controls required by Subsections R313-15-601(1) and R313-15-601(3) in a way that does not prevent individuals from leaving a high radiation area.

(5) The licensee or registrant is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation provided that:

(a) The packages do not remain in the area longer than three days; and

(b) The dose rate at one meter from the external surface of any package does not exceed 0.1 mSv (0.01 rem) per hour.

(6) The licensee or registrant is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the established limits in Rule R313-15 and to operate within the ALARA provisions of the licensee's or registrant's radiation protection program.

(7) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area as described in Section R313-15-601 if the registrant has met all the specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-602. Control of Access to Very High Radiation Areas.

(1) In addition to the requirements in Section R313-15-601, the licensee or registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at five Gy (500 rad) or more in one hour at one meter from a source of radiation or any surface through which the radiation penetrates. This requirement does not apply to rooms or areas in which diagnostic x-ray systems are the only source of radiation, or to non-self-shielded irradiators.

(2) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as described in Subsection R313-15-602(1) if the registrant has met all the specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-603. Control of Access to Very High Radiation Areas -- Irradiators.

(1) Section R313-15-603 applies to licensees or registrants with sources of radiation in non-self-shielded irradiators. Section R313-15-603 does not apply to sources of radiation that are used in teletherapy, in industrial radiography, or in completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create a high levels of radiation in an area that is accessible to any individual.

(2) Each area in which there may exist radiation levels in excess of five Gy (500 rad) in one hour at one meter from a source of radiation that is used to irradiate materials shall meet the following requirements:

(a) Each entrance or access point shall be equipped with entry control devices which:

(i) Function automatically to prevent any individual from inadvertently entering a very high radiation area; and

(ii) Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(iii) Prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of one mSv (0.1 rem) in one hour.

(b) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by Subsection R313-15-603(2)(a):

(i) The radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual, who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices.

(c) The licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:

(i) The radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and the licensee or registrant or at least one other individual, who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier.

(d) When the shield for stored sealed sources is a liquid, the licensee or registrant shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.

(e) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of Subsections R313-15-603(2)(c) and R313-15-603(2)(d).

(f) Each area shall be equipped with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, which shall be installed in the area and which can prevent the source of radiation from being put into operation.

(g) Each area shall be controlled by use of such administrative procedures and such devices as are necessary to ensure that the area is cleared of personnel prior to each use of the source of radiation.

(h) Each area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area is below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour.

(i) The entry control devices required in Subsection R313-15-603(2)(a) shall be tested for proper functioning. See Section R313-15-1110 for recordkeeping requirements.

(i) Testing shall be conducted prior to initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day; and

(ii) Testing shall be conducted prior to resumption of operation of the source of radiation after any unintentional interruption; and

(iii) The licensee or registrant shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

(j) The licensee or registrant shall not conduct operations, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls, unless control devices are functioning properly.

(k) Entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, shall be controlled by such devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any loose radioactive material that is carried toward such an exit and automatically to prevent loose radioactive material from being carried out of the area.

(3) Licensees, registrants, or applicants for licenses or registrations for sources of radiation within the purview of Subsection R313-15-603(2) which will be used in a variety of positions or in locations, such as open fields or forests, that make it impractical to comply with certain requirements of Subsection R313-15-603(2), such as those for the automatic control of radiation levels, may apply to the Executive Secretary for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to those specified in Subsection R313-15-603(2). At least one of the alternative measures shall include an entry-preventing interlock control based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such sources of radiation are used.

(4) The entry control devices required by Subsections R313-15-603(2) and R313-15-603(3) shall be established in such a way that no individual will be prevented from leaving the area.

R313-15-701. Use of Process or Other Engineering Controls.

The licensee or registrant shall use, to the extent practical, process or other engineering controls, such as, containment,

decontamination, or ventilation, to control the concentration of radioactive material in air.

R313-15-702. Use of Other Controls.

(1) When it is not practical to apply process or other engineering controls to control the concentration of radioactive material in the air to values below those that define an airborne radioactivity area, the licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

(a) Control of access; or

(b) Limitation of exposure times; or

(c) Use of respiratory protection equipment; or

(d) Other controls.

(2) If the licensee or registrant performs an ALARA analysis to determine whether or not respirators should be used, the licensee may consider safety factors other than radiological factors. The licensee or registrant should also consider the impact of respirator use on workers' industrial health and safety.

R313-15-703. Use of Individual Respiratory Protection Equipment.

If the licensee or registrant uses respiratory protection equipment to limit the intake of radioactive material:

(1) Except as provided in Subsection R313-15-703(2), the licensee or registrant shall use only respiratory protection equipment that is tested and certified by the National Institute for Occupational Safety and Health.

(2) The licensee or registrant may use equipment that has not been tested or certified by the National Institute for Occupational Safety and Health or for which there is no schedule for testing or certification, provided the licensee or registrant has submitted to the Executive Secretary and the Executive Secretary has approved an application for authorized use of that equipment. The application must include a demonstration by testing, or a demonstration on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(3) The licensee or registrant shall implement and maintain a respiratory protection program that includes:

(a) Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses; and

(b) Surveys and bioassays, as necessary, to evaluate actual intakes; and

(c) Testing of respirators for operability, user seal check for face sealing devices and functional check for others, immediately prior to each use; and

(d) Written procedures regarding

(i) Monitoring, including air sampling and bioassays;

(ii) Supervision and training of respirator users;

(iii) Fit testing;

(iv) Respirator selection;

(v) Breathing air quality;

(vi) Inventory and control;

(vii) Storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;

(viii) Recordkeeping; and

(ix) Limitations on periods of respirator use and relief from respirator use; and

(e) Determination by a physician prior to initial fitting of respirators, before the first field use of non-face sealing respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment; and

(f) Fit testing, with fit factor greater than or equal to ten times the APF for negative pressure devices, and a fit factor greater than or equal to 500 for positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed one year. Fit testing must be performed with the facepiece operating in the negative pressure mode.

(4) The licensee or registrant shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(5) The licensee or registrant shall also consider limitations appropriate to the type and mode of use. When selecting respiratory devices the licensee shall provide for vision correction, adequate communication, low temperature work environments, and the concurrent use of other safety or radiological protection equipment. The licensee or registrant shall use equipment in such a way as not to interfere with the proper operation of the respirator.

(6) Standby rescue persons are required whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. The standby persons must be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons must be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

(7) Atmosphere-supplying respirators must be supplied with respirable air of grade D quality or better as defined by the Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 ed. and included in 29 CFR 1910.134(i)(1)(ii)(A) through (E), 2000 ed. Grade D quality air criteria include:

(a) Oxygen content (v/v) of 19.5 to 23.5%;

(b) Hydrocarbon (condensed) content of five milligrams per cubic meter of air or less;

(c) Carbon monoxide (CO) content of ten ppm or less;

(d) Carbon dioxide content of 1,000 ppm or less; and

(e) Lack of noticeable odor.

(8) The licensee shall ensure that no objects, materials or

substances, such as facial hair, or any conditions that interfere with the face and facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

(9) In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the corrected value must be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.

R313-15-704. Further Restrictions on the Use of Respiratory Protection Equipment.

The Executive Secretary may impose restrictions in addition to the provisions of Section R313-15-702, Section R313-15-703, and Appendix A of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference to:

(1) Ensure that the respiratory protection program of the licensee or registrant is adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

(2) Limit the extent to which a licensee or registrant may use respiratory protection equipment instead of process or other engineering controls.

R313-15-705. Application for Use of Higher Assigned Protection Factors.

The licensee or registrant shall obtain authorization from the Executive Secretary before using assigned protection factors in excess of those specified in Appendix A of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference. The Executive Secretary may authorize a licensee or registrant to use higher assigned protection factors on receipt of an application that:

(1) Describes the situation for which a need exists for higher protection factors; and

(2) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

R313-15-801. Security and Control of Licensed or Registered Sources of Radiation.

(1) The licensee or registrant shall secure licensed or registered radioactive material from unauthorized removal or access.

(2) The licensee or registrant shall maintain constant surveillance, and use devices or administrative procedures to prevent unauthorized use of licensed or registered radioactive material that is in an unrestricted area and that is not in storage.

(3) The registrant shall secure registered radiation machines from unauthorized removal.

(4) The registrant shall use devices or administrative procedures to prevent unauthorized use of registered radiation machines.

R313-15-901. Caution Signs.

(1) Standard Radiation Symbol. Unless otherwise authorized by the Executive Secretary, the symbol prescribed by 10 CFR 20.1901, 2001 ed., which is incorporated by reference, shall use the colors magenta, or purple, or black on yellow background. The symbol prescribed is the three-bladed design as follows:

(a) Cross-hatched area is to be magenta, or purple, or black, and

(b) The background is to be yellow.

(2) Exception to Color Requirements for Standard Radiation Symbol. Notwithstanding the requirements of 10 CFR 20.1901(a), 2001 ed., which is incorporated by reference, licensees or registrants are authorized to label sources, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(3) Additional Information on Signs and Labels. In addition to the contents of signs and labels prescribed in Rule R313-15, the licensee or registrant shall provide, on or near the required signs and labels, additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

R313-15-902. Posting Requirements.

(1) Posting of Radiation Areas. The licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(2) Posting of High Radiation Areas. The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(3) Posting of Very High Radiation Areas. The licensee or registrant shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA."

(4) Posting of Airborne Radioactivity Areas. The licensee or registrant shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

(5) Posting of Areas or Rooms in which Licensed or Registered Material is Used or Stored. The licensee or registrant shall post each area or room in which there is used or stored an amount of licensed or registered material exceeding ten times the quantity of such material specified in Appendix C of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference, with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL."

R313-15-903. Exceptions to Posting Requirements.

(1) A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight hours, if each of the following conditions is met:

(a) The sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in Rule R313-15; and

(b) The area or room is subject to the licensee's or registrant's control.

(2) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to Section R313-15-902 provided that the patient could be released from licensee control pursuant to Section R313-32-75.

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the sealed source container or housing does not exceed 0.05 mSv (0.005 rem) per hour.

(4) A room or area is not required to be posted with a caution sign because of the presence of radiation machines used solely for diagnosis in the healing arts.

(5) Rooms in hospitals or clinics that are used for teletherapy are exempt from the requirement to post caution signs under Section R313-15-902 if:

(a) Access to the room is controlled pursuant to Section R313-32-615; and

(b) Personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and members of the public to radiation in excess of the limits established in Rule R313-15.

R313-15-904. Labeling Containers and Radiation Machines.

(1) The licensee or registrant shall ensure that each container of licensed or registered material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) Each licensee or registrant shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

(3) Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner which cautions individuals that radiation is produced when it is energized.

R313-15-905. Exemptions to Labeling Requirements.

A licensee or registrant is not required to label:

(1) Containers holding licensed or registered material in quantities less than the quantities listed in Appendix C of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference; or

(2) Containers holding licensed or registered material in concentrations less than those specified in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference; or

(3) Containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by Rule R313-15; or

(4) Containers when they are in transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation; or

(5) Containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells. The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(6) Installed manufacturing or process equipment, such as piping and tanks.

R313-15-906. Procedures for Receiving and Opening Packages.

(1) Each licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as used in Section R313-19-100, which incorporates 10 CFR 71.4 by reference, shall make arrangements to receive:

(a) The package when the carrier offers it for delivery; or

(b) The notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(2) Each licensee or registrant shall:

(a) Monitor the external surfaces of a labeled package for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in Section R313-12-3; and

(b) Monitor the external surfaces of a labeled package for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as used in Section R313-19-100, which incorporates 10 CFR 71.4 by reference; and

(c) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(3) The licensee or registrant shall perform the monitoring required by Subsection R313-15-906(2) as soon as practical after receipt of the package, but not later than three hours after the package is received at the licensee's or registrant's facility if it is received during the licensee's or registrant's normal working hours or if there is evidence of degradation of package integrity, such as a package that is crushed, wet, or damaged. If a package is received after working hours, and has no evidence of degradation of package integrity, the package shall be monitored no later than three hours from the beginning of the next working day.

(4) The licensee or registrant shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the Executive Secretary when:

(a) Removable radioactive surface contamination exceeds

the limits of Section R313-19-100 which incorporates 10 CFR 71.87(i) by reference; or

(b) External radiation levels exceed the limits of Section R313-19-100 which incorporates 10 CFR 71.47 by reference.

(5) Each licensee or registrant shall:

(a) Establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(b) Ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(6) Licensees or registrants transferring special form sources in vehicles owned or operated by the licensee or registrant to and from a work site are exempt from the contamination monitoring requirements of Subsection R313-15-906(2), but are not exempt from the monitoring requirement in Subsection R313-15-906(2) for measuring radiation levels that ensures that the source is still properly lodged in its shield.

R313-15-1001. Waste Disposal - General Requirements.

(1) A licensee or registrant shall dispose of licensed or registered material only:

(a) By transfer to an authorized recipient as provided in Section R313-15-1006 or in Rules R313-21, R313-22, or R313-25, or to the U.S. Department of Energy; or

(b) By decay in storage; or

(c) By release in effluents within the limits in Section R313-15-301; or

(d) As authorized pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, or R313-15-1005.

(2) A person shall be specifically licensed or registered to receive waste containing licensed or registered material from other persons for:

(a) Treatment prior to disposal; or

(b) Treatment or disposal by incineration; or

(c) Decay in storage; or

(d) Disposal at a land disposal facility licensed pursuant to Rule R313-25; or

(e) Storage until transferred to a storage or disposal facility authorized to receive the waste.

R313-15-1002. Method for Obtaining Approval of Proposed Disposal Procedures.

A licensee or registrant or applicant for a license or registration may apply to the Executive Secretary for approval of proposed procedures, not otherwise authorized in these rules, to dispose of licensed or registered material generated in the licensee's or registrant's operations. Each application shall include:

(1) A description of the waste containing licensed or registered material to be disposed of, including the physical and chemical properties that have an impact on risk evaluation, and the proposed manner and conditions of waste disposal; and

(2) An analysis and evaluation of pertinent information on the nature of the environment; and

(3) The nature and location of other potentially affected facilities; and

(4) Analyses and procedures to ensure that doses are maintained ALARA and within the dose limits in Rule R313-15.

R313-15-1003. Disposal by Release into Sanitary Sewerage.

(1) A licensee or registrant may discharge licensed or registered material into sanitary sewerage if each of the following conditions is satisfied:

(a) The material is readily soluble, or is readily dispersible biological material, in water; and

(b) The quantity of licensed or registered radioactive material that the licensee or registrant releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee or registrant does not exceed the concentration listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference; and

(c) If more than one radionuclide is released, the following conditions shall also be satisfied:

(i) The licensee or registrant shall determine the fraction of the limit in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference, represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee or registrant into the sewer by the concentration of that radionuclide listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference; and

(ii) The sum of the fractions for each radionuclide required by Subsection R313-15-1003(1)(c)(i) does not exceed unity; and

(d) The total quantity of licensed or registered radioactive material that the licensee or registrant releases into the sanitary sewerage system in a year does not exceed 185 GBq (five Ci) of hydrogen-3, 37 GBq (one Ci) of carbon-14, and 37 GBq (one Ci) of all other radioactive materials combined.

(2) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in Subsection R313-15-1003(1).

R313-15-1004. Treatment or Disposal by Incineration.

A licensee or registrant may treat or dispose of licensed or registered material by incineration only in the form and concentration specified in Section R313-15-1005 or as specifically approved by the Executive Secretary pursuant to Section R313-15-1002.

R313-15-1005. Disposal of Specific Wastes.

(1) A licensee or registrant may dispose of the following licensed or registered material as if it were not radioactive:

(a) 1.85 kBq (0.05 uCi), or less, of hydrogen-3 or carbon-14 per gram of medium used for liquid scintillation counting; and

(b) 1.85 kBq (0.05 uCi) or less, of hydrogen-3 or carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.

(2) A licensee or registrant shall not dispose of tissue pursuant to Subsection R313-15-1005(1)(b) in a manner that would permit its use either as food for humans or as animal feed.

(3) The licensee or registrant shall maintain records in accordance with Section R313-15-1109.

R313-15-1006. Transfer for Disposal and Manifests.

(1) The requirements of Section R313-15-1006 and Appendix G of 10 CFR 20.1001 to 20.2402, 2001 ed., which are incorporated into these rules by reference, are designed to:

(a) control transfers of low-level radioactive waste by any waste generator, waste collector, or waste processor licensee, as defined in Appendix G in 10 CFR 20.1001 to 20.2402, 2001 ed., who ships low-level waste either directly, or indirectly through a waste collector or waste processor, to a licensed low-level waste land disposal facility as defined in Section R313-25-2;

(b) establish a manifest tracking system; and

(c) supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on the U.S. Nuclear Regulatory Commission's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with Appendix G to 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated into these rules by reference.

(3) Each shipment manifest shall include a certification by the waste generator as specified in Section II of Appendix G to 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference.

(4) Each person involved in the transfer of waste for disposal or in the disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in Section III of Appendix G to 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference.

R313-15-1007. Compliance with Environmental and Health Protection Rules.

Nothing in Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006 relieves the licensee or registrant from complying with other applicable Federal, State and local rules governing any other toxic or hazardous properties of materials that may be disposed of pursuant to Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006.

R313-15-1008. Classification and Characteristics of Low-Level Radioactive Waste.

(1) Classification of Radioactive Waste for Land Disposal

(a) Considerations. Determination of the classification of radioactive waste involves two considerations. First, consideration shall be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration shall be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(b) Classes of waste.

(i) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste shall meet the minimum requirements set forth in Subsection R313-15-1008(2)(a). If Class A waste also meets the stability requirements set forth in Subsection R313-15-1008(2)(b), it is not necessary to segregate the waste for disposal.

(ii) Class B waste is waste that shall meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1008(2).

(iii) Class C waste is waste that not only shall meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1008(2).

(c) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in Table I, classification shall be determined as follows:

(i) If the concentration does not exceed 0.1 times the value in Table I, the waste is Class A.

(ii) If the concentration exceeds 0.1 times the value in Table I, but does not exceed the value in Table I, the waste is Class C.

(iii) If the concentration exceeds the value in Table I, the waste is not generally acceptable for land disposal.

(iv) For wastes containing mixtures of radionuclides listed in Table I, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1008(1)(g).

TABLE I

Concentration

Radionuclide	curie/cubic meter(1)	nanocurie/gram(2)
C-14	8	
C-14 in activated metal	80	
Ni-59 in activated metal	220	
Nb-94 in activated metal	0.2	
Tc-99	3	
I-129	0.08	
Alpha emitting transuranic radionuclides with half-life greater than five years		100
Pu-241		3,500
Cm-242		20,000
Ra-226		100

NOTE: (1) To convert the Ci/m^3 values to gigabecquerel (GBq)/cubic meter, multiply the Ci/m^3 value by 37.
(2) To convert the nCi/g values to becquerel (Bq)/gram, multiply the nCi/g value by 37.

(d) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in Table I, classification shall be determined based on the concentrations shown in Table II. However, as specified in Subsection R313-15-1008(1)(f), if radioactive waste does not contain any nuclides listed in either Table I or II, it is Class A.

(i) If the concentration does not exceed the value in Column 1, the waste is Class A.

(ii) If the concentration exceeds the value in Column 1 but does not exceed the value in Column 2, the waste is Class B.

(iii) If the concentration exceeds the value in Column 2 but does not exceed the value in Column 3, the waste is Class C.

(iv) If the concentration exceeds the value in Column 3, the waste is not generally acceptable for near-surface disposal.

(v) For wastes containing mixtures of the radionuclides listed in Table II, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1008(1)(g).

TABLE II

Radionuclide	Concentration, curie/cubic meter(1)		
	Column 1	Column 2	Column 3
Total of all radionuclides with less than 5-year half-life	700	(2)	(2)
H-3	40	(2)	(2)
Co-60	700	(2)	(2)
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7000
Sr-90	0.04	150	7000
Cs-137	1	44	4600

NOTE: (1) To convert the Ci/m^3 value to gigabecquerel (GBq)/cubic meter, multiply the Ci/m^3 value by 37.
(2) There are no limits established for these radionuclides in Class B or C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentrations of other radionuclides in Table II determine the waste to be Class C independent of these radionuclides.

(e) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in Table I and some of which are listed in Table II, classification shall be determined as follows:

(i) If the concentration of a radionuclide listed in Table I is less than 0.1 times the value listed in Table I, the class shall be that determined by the concentration of radionuclides listed in Table II.

(ii) If the concentration of a radionuclide listed in Table I exceeds 0.1 times the value listed in Table I, but does not exceed the value in Table I, the waste shall be Class C, provided the concentration of radionuclides listed in Table II does not exceed the value shown in Column 3 of Table II.

(f) Classification of wastes with radionuclides other than those listed in Tables I and II. If the waste does not contain any radionuclides listed in either Table I or II, it is Class A.

(g) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits shall all be taken from the same column of the same table. The sum of the fractions for the column shall be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 1.85 TBq/m^3 (50 Ci/m^3) and Cs-137 in a concentration of 814 GBq/m^3 (22 Ci/m^3). Since the concentrations both exceed the values in Column 1, Table II, they shall be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33., for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.

(h) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as becquerel (nanocurie) per gram.

(2) Radioactive Waste Characteristics

(a) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.

(i) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of Rule R313-15, the site license conditions shall govern.

(ii) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(iii) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(iv) Solid waste containing liquid shall contain as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume.

(v) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(vi) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with Subsection R313-15-1008(2)(a)(viii).

(vii) Waste shall not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(viii) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20 degrees celsius. Total activity shall not exceed 3.7 TBq (100 Ci) per container.

(ix) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practical the potential hazard from the non-radiological materials.

(b) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.

(i) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical

dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(ii) Notwithstanding the provisions in Subsections R313-15-1008(2)(a)(iii) and R313-15-1008(2)(a)(iv), liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5 percent of the volume of the waste for waste processed to a stable form.

(iii) Void spaces within the waste and between the waste and its package shall be reduced to the extent practical.

(3) Labeling. Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with Subsection R313-15-1008(1).

R313-15-1101. Records - General Provisions.

(1) Each licensee or registrant shall use the SI units becquerel, gray, sievert and coulomb per kilogram, or the special units, curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by Rule R313-15.

(2) Notwithstanding the requirements of Subsection R313-15-1101(1), when recording information on shipment manifests, as required in Subsection R313-15-1006(2), information must be recorded in SI units or in SI units and the special units specified in Subsection R313-15-1101(1).

(3) The licensee or registrant shall make a clear distinction among the quantities entered on the records required by Rule R313-15, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, lens dose equivalent, deep dose equivalent, or committed effective dose equivalent.

R313-15-1102. Records of Radiation Protection Programs.

(1) Each licensee or registrant shall maintain records of the radiation protection program, including:

(a) The provisions of the program; and

(b) Audits and other reviews of program content and implementation.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(a) until the Executive Secretary terminates each pertinent license or registration requiring the record. The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(b) for three years after the record is made.

R313-15-1103. Records of Surveys.

(1) Each licensee or registrant shall maintain records showing the results of surveys and calibrations required by Section R313-15-501 and Subsection R313-15-906(2). The licensee or registrant shall retain these records for three years after the record is made.

(2) The licensee or registrant shall retain each of the following records until the Executive Secretary terminates each pertinent license or registration requiring the record:

(a) Records of the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents; and

(b) Records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose; and

(c) Records showing the results of air sampling, surveys, and bioassays required pursuant to Subsections R313-15-703(3)(a) and R313-15-703(3)(b); and

(d) Records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

R313-15-1104. Records of Tests for Leakage or Contamination of Sealed Sources.

Records of tests for leakage or contamination of sealed sources required by Section R313-15-1401 shall be kept in units of becquerel or microcurie and maintained for inspection by the Executive Secretary for five years after the records are made.

R313-15-1105. Records of Prior Occupational Dose.

For each individual who is likely to receive in a year an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall retain the records of prior occupational dose and exposure history as specified in Section R313-15-205 on form DRC-05 or equivalent until the Executive Secretary terminates each pertinent license requiring this record. The licensee or registrant shall retain records used in preparing form DRC-05 or equivalent for three years after the record is made.

R313-15-1106. Records of Planned Special Exposures.

(1) For each use of the provisions of Section R313-15-206 for planned special exposures, the licensee or registrant shall maintain records that describe:

(a) The exceptional circumstances requiring the use of a planned special exposure; and

(b) The name of the management official who authorized the planned special exposure and a copy of the signed authorization; and

(c) What actions were necessary; and

(d) Why the actions were necessary; and

(e) What precautions were taken to assure that doses were maintained ALARA; and

(f) What individual and collective doses were expected to result; and

(g) The doses actually received in the planned special exposure.

(2) The licensee or registrant shall retain the records until the Executive Secretary terminates each pertinent license or registration requiring these records.

R313-15-1107. Records of Individual Monitoring Results.

(1) Recordkeeping Requirement. Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to Section R313-15-502, and records of doses received during

planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:

(a) The deep dose equivalent to the whole body, lens dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities; and

(b) The estimated intake of radionuclides, see Section R313-15-202; and

(c) The committed effective dose equivalent assigned to the intake of radionuclides; and

(d) The specific information used to calculate the committed effective dose equivalent pursuant to Subsections R313-15-204(1) and R313-15-204(3) and when required by Section R313-15-502; and

(e) The total effective dose equivalent when required by Section R313-15-202; and

(f) The total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose.

(2) Recordkeeping Frequency. The licensee or registrant shall make entries of the records specified in Subsection R313-15-1107(1) at intervals not to exceed one year.

(3) Recordkeeping Format. The licensee or registrant shall maintain the records specified in Subsection R313-15-1107(1) on form DRC-06, in accordance with the instructions for form DRC-06, or in clear and legible records containing all the information required by form DRC-06.

(4) The licensee or registrant shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

(5) The licensee or registrant shall retain each required form or record until the Executive Secretary terminates each pertinent license or registration requiring the record.

R313-15-1108. Records of Dose to Individual Members of the Public.

(1) Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public. See Section R313-15-301.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1108(1) until the Executive Secretary terminates each pertinent license or registration requiring the record. Requirements for disposition of these records, prior to license termination, are located in Section R313-12-51 for activities licensed under these rules.

R313-15-1109. Records of Waste Disposal.

(1) Each licensee or registrant shall maintain records of the disposal of licensed or registered materials made pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, Rule R313-25, and disposal by burial in soil, including burials authorized before January 28, 1981.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1109(1) until the Executive Secretary terminates each pertinent license or registration requiring the record.

R313-15-1110. Records of Testing Entry Control Devices for Very High Radiation Areas.

(1) Each licensee or registrant shall maintain records of tests made pursuant to Subsection R313-15-603(2)(i) on entry control devices for very high radiation areas. These records shall include the date, time, and results of each such test of function.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1110(1) for three years after the record is made.

R313-15-1111. Form of Records.

Each record required by Rule R313-15 shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period or the record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

R313-15-1201. Reports of Stolen, Lost, or Missing Licensed or Registered Sources of Radiation.

(1) Telephone Reports. Each licensee or registrant shall report to the Executive Secretary by telephone as follows:

(a) Immediately after its occurrence becomes known to the licensee or registrant, stolen, lost, or missing licensed or registered radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference, under such circumstances that it appears to the licensee or registrant that an exposure could result to individuals in unrestricted areas;

(b) Within 30 days after its occurrence becomes known to the licensee or registrant, lost, stolen, or missing licensed or registered radioactive material in an aggregate quantity greater than ten times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference, that is still missing.

(c) Immediately after its occurrence becomes known to the registrant, a stolen, lost, or missing radiation machine.

(2) Written Reports. Each licensee or registrant required to make a report pursuant to Subsection R313-15-1201(1) shall, within 30 days after making the telephone report, make a written report to the Executive Secretary setting forth the following information:

(a) A description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model and serial number, type and maximum energy of radiation emitted;

(b) A description of the circumstances under which the loss or theft occurred; and

(c) A statement of disposition, or probable disposition, of the licensed or registered source of radiation involved; and

(d) Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas; and

(e) Actions that have been taken, or will be taken, to recover the source of radiation; and

(f) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

(3) Subsequent to filing the written report, the licensee or registrant shall also report additional substantive information on the loss or theft within 30 days after the licensee or registrant learns of such information.

(4) The licensee or registrant shall prepare any report filed with the Executive Secretary pursuant to Section R313-15-1201 so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

R313-15-1202. Notification of Incidents.

(1) Immediate Notification. Notwithstanding other requirements for notification, each licensee or registrant shall immediately report each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause any of the following conditions:

(a) An individual to receive:

(i) A total effective dose equivalent of 0.25 Sv (25 rem) or more; or

(ii) A lens dose equivalent of 0.75 Sv (75 rem) or more; or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 2.5 Gy (250 rad) or more; or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(2) Twenty-Four Hour Notification. Each licensee or registrant shall, within 24 hours of discovery of the event, report to the Executive Secretary each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause, any of the following conditions:

(a) An individual to receive, in a period of 24 hours:

(i) A total effective dose equivalent exceeding 0.05 Sv (five rem); or

(ii) A lens dose equivalent exceeding 0.15 Sv (15 rem); or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 0.5 Sv (50 rem); or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(3) The licensee or registrant shall prepare each report filed with the Executive Secretary pursuant to Section R313-15-1202 so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

(4) Licensees or registrants shall make the reports required by Subsections R313-15-1202(1) and R313-15-1202(2) to the Executive Secretary by telephone, telegram, mailgram, or facsimile.

(5) The provisions of Section R313-15-1202 do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to Section R313-15-1204.

R313-15-1203. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits.

(1) Reportable Events. In addition to the notification required by Section R313-15-1202, each licensee or registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(a) Incidents for which notification is required by Section R313-15-1202; or

(b) Doses in excess of any of the following:

(i) The occupational dose limits for adults in Section R313-15-201; or

(ii) The occupational dose limits for a minor in Section R313-15-207; or

(iii) The limits for an embryo/fetus of a declared pregnant woman in Section R313-15-208; or

(iv) The limits for an individual member of the public in Section R313-15-301; or

(v) Any applicable limit in the license or registration; or

(vi) The ALARA constraints for air emissions established under Subsection R313-15-101(4); or

(c) Levels of radiation or concentrations of radioactive material in:

(i) A restricted area in excess of applicable limits in the license or registration; or

(ii) An unrestricted area in excess of ten times the applicable limit set forth in Rule R313-15 or in the license or registration, whether or not involving exposure of any individual in excess of the limits in Section R313-15-301; or

(d) For licensees subject to the provisions of U.S. Environmental Protection Agency's generally applicable environmental radiation standards in 40 CFR 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those standards.

(2) Contents of Reports.

(a) Each report required by Subsection R313-15-1203(1) shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(i) Estimates of each individual's dose; and

(ii) The levels of radiation and concentrations of radioactive material involved; and

(iii) The cause of the elevated exposures, dose rates, or concentrations; and

(iv) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license or registration conditions.

(b) Each report filed pursuant to Subsection R313-15-1203(1) shall include for each occupationally overexposed

individual: the name, Social Security account number, and date of birth. With respect to the limit for the embryo/fetus in Section R313-15-208, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(3) All licensees or registrants who make reports pursuant to Subsection R313-15-1203(1) shall submit the report in writing to the Executive Secretary.

R313-15-1204. Reports of Planned Special Exposures.

The licensee or registrant shall submit a written report to the Executive Secretary within 30 days following any planned special exposure conducted in accordance with Section R313-15-206, informing the Executive Secretary that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by Section R313-15-1106.

R313-15-1205. Reports to Individuals of Exceeding Dose Limits.

When a licensee or registrant is required, pursuant to the provisions of Sections R313-15-1203 or R313-15-1204, to report to the Executive Secretary any exposure of an identified occupationally exposed individual, or an identified member of the public, to sources of radiation, the licensee or registrant shall also provide a copy of the report submitted to the Executive Secretary to the individual. This report shall be transmitted at a time no later than the transmittal to the Executive Secretary.

R313-15-1207. Notifications and Reports to Individuals.

(1) Requirements for notification and reports to individuals of exposure to radiation or radioactive material are specified in Rule R313-18.

(2) When a licensee or registrant is required pursuant to Section R313-15-1203 to report to the Executive Secretary any exposure of an individual to radiation or radioactive material, the licensee or registrant shall also notify the individual. Such notice shall be transmitted at a time not later than the transmittal to the Executive Secretary, and shall comply with the provisions of Rule R313-18.

R313-15-1208. Reports of Leaking or Contaminated Sealed Sources.

If the test for leakage or contamination required pursuant to Section R313-15-1401 indicates a sealed source is leaking or contaminated, a report of the test shall be filed within five days with the Executive Secretary describing the equipment involved, the test results and the corrective action taken.

R313-15-1301. Vacating Premises.

Each specific licensee or registrant shall, no less than 30 days before vacating or relinquishing possession or control of premises which may have been contaminated with radioactive material as a result of his activities, notify the Executive Secretary in writing of intent to vacate. When deemed necessary by the Executive Secretary, the licensee shall decontaminate the premises in such a manner that the annual total effective dose equivalent to any individual after the site is released for unrestricted use should not exceed 0.1 mSv (0.01 rem)above background and that the annual total effective dose equivalent from any specific environmental source during decommissioning activities should not exceed 0.1 mSv (0.01 rem)above background.

R313-15-1401. Testing for Leakage or Contamination of Sealed Sources.

(1) The licensee or registrant in possession of any sealed source shall assure that:

(a) Each sealed source, except as specified in Subsection R313-15-1401(2), is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee or registrant has a certificate from the transferor indicating that the sealed source was tested within six months before transfer to the licensee or registrant.

(b) Each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the Executive Secretary, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission.

(c) Each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the Executive Secretary, an Agreement State, a Licensing State, or the Nuclear Regulatory Commission.

(d) For each sealed source that is required to be tested for leakage or contamination, at any other time there is reason to suspect that the sealed source might have been damaged or might be leaking, the licensee or registrant shall assure that the sealed source is tested for leakage or contamination before further use.

(e) Tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium, shall be capable of detecting the presence of 185 Bq (0.005 uCi) of radioactive material on a test sample. Test samples shall be taken from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted on which one might expect contamination to accumulate. For a sealed source contained in a device, test samples are obtained when the source is in the "off" position.

(f) The test for leakage for brachytherapy sources manufactured to contain radium shall be capable of detecting an absolute leakage rate of 37 Bq (0.001 uCi) of radon-222 in a 24 hour period when the collection efficiency for radon-222 and its daughters has been determined with respect to collection method, volume and time.

(g) Tests for contamination from radium daughters shall be taken on the interior surface of brachytherapy source storage containers and shall be capable of detecting the presence of 185 Bq (0.005 uCi) of a radium daughter which has a half-life greater than four days.

(2) A licensee or registrant need not perform tests for leakage or contamination on the following sealed sources:

(a) Sealed sources containing only radioactive material with a half-life of less than 30 days;

(b) Sealed sources containing only radioactive material as a gas;

(c) Sealed sources containing 3.7 MBq (100 uCi) or less

of beta or photon-emitting material or 370 kBq (ten uCi) or less of alpha-emitting material;

(d) Sealed sources containing only hydrogen-3;

(e) Seeds of iridium-192 encased in nylon ribbon; and

(f) Sealed sources, except teletherapy and brachytherapy sources, which are stored, not being used and identified as in storage. The licensee or registrant shall, however, test each such sealed source for leakage or contamination and receive the test results before any use or transfer unless it has been tested for leakage or contamination within six months before the date of use or transfer.

(3) Tests for leakage or contamination from sealed sources shall be performed by persons specifically authorized by the Executive Secretary, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission to perform such services.

(4) Test results shall be kept in units of becquerel or microcurie and maintained for inspection by representatives of the Executive Secretary. Records of test results for sealed sources shall be made pursuant to Section R313-15-1104.

(5) The following shall be considered evidence that a sealed source is leaking:

(a) The presence of 185 Bq (0.005 uCi) or more of removable contamination on any test sample.

(b) Leakage of 37 Bq (0.001 uCi) of radon-222 per 24 hours for brachytherapy sources manufactured to contain radium.

(c) The presence of removable contamination resulting from the decay of 185 Bq (0.005 uCi) or more of radium.

(6) The licensee or registrant shall immediately withdraw a leaking sealed source from use and shall take action to prevent the spread of contamination. The leaking sealed source shall be repaired or disposed of in accordance with Rule R313-15.

(7) Reports of test results for leaking or contaminated sealed sources shall be made pursuant to Section R313-15-1208.

KEY: radioactive material, contamination, waste disposal, safety

September 14, 2001 19-3-104

Notice of Continuation April 30, 1998 19-3-108

R313. Environmental Quality, Radiation Control.
R313-22. Specific Licenses.
R313-22-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe the requirements for the issuance of specific licenses.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(3) and 19-3-104(6).

R313-22-2. General.

The provisions and requirements of Rule R313-22 are in addition to, and not in substitution for, other requirements of these rules. In particular the provisions of Rule R313-19 apply to applications and licenses subject to Rule R313-22.

R313-22-4. Definitions.

"Alert" means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by off-site response organizations to protect persons off-site.

"Principal activities" means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

"Site Area Emergency" means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by off-site response organizations to protect persons off-site.

R313-22-30. Specific License by Rule.

A license by rule is issued in the following circumstances, without the necessity of filing an application for a specific license as required by Subsection R313-22-32(1), and the licensee shall be subject to the applicable provisions of Sections R313-22-33, R313-22-34, R313-22-35, R313-22-36 and R313-22-37:

(1) When a site must be timely remediated of contamination by radioactive materials that are subject to licensing under these rules but are unlicensed;

(2) When radioactive materials existing as a result of improper handling, spillage, accidental contamination, or unregulated or illegal possession, transfer, or receipt, must be stored and those materials have not been licensed under these rules.

R313-22-32. Filing Application for Specific Licenses.

(1) Applications for specific licenses shall be filed on a form prescribed by the Executive Secretary.

(2) The Executive Secretary may, after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Executive Secretary to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Applications shall be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's behalf.

(4) An application for a license may include a request for a license authorizing one or more activities.

(5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Executive Secretary, provided the references are clear and specific.

(6) An application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source shall identify the source or device by manufacturer and model number as registered with the U.S. Nuclear Regulatory Commission under 10 CFR 32.210, 2001 ed. or the equivalent regulations of an Agreement State.

(7) As provided by Section R313-22-35, certain applications for specific licenses filed under these rules shall contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before January 1, 1995, this submittal may follow the renewal application but shall be submitted on or before January 1, 1995.

(8)(a) Applications to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Section R313-22-90, "Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release", shall contain either:

(i) An evaluation showing that the maximum dose to a individual off-site due to a release of radioactive materials would not exceed one rem effective dose equivalent or five rems to the thyroid; or

(ii) An emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted under Subsection R313-22-32(8)(a)(i):

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(iii) The release fraction in the respirable size range would be lower than the release fraction shown in Section R313-22-90 due to the chemical or physical form of the material;

(iv) The solubility of the radioactive material would reduce the dose received;

(v) Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in Section R313-22-90;

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in Section R313-22-90; or

(vii) Other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted under Subsection R313-22-32(8)(a)(ii) shall include the following information:

(i) Facility description. A brief description of the licensee's facility and area near the site.

(ii) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(iii) Classification of accidents. A classification system

for classifying accidents as alerts or site area emergencies.

(iv) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(v) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers on-site, and a description of the program for maintaining equipment.

(vi) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the Executive Secretary; also responsibilities for developing, maintaining, and updating the plan.

(viii) Notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured on-site workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the Executive Secretary immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency.

NOTE: These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499 or other state or federal reporting requirements, including 40 CFR 302, 2000 ed.

(ix) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the Executive Secretary.

(x) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site including the use of team training for the scenarios.

(xi) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations and biennial on-site exercises to test response to simulated emergencies. Quarterly communications checks with off-site response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises although recommended is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(xiii) Hazardous chemicals. A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(d) The licensee shall allow the off-site response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the Executive Secretary. The licensee shall provide any comments received within the 60 days to the Executive Secretary with the emergency plan.

R313-22-33. General Requirements for the Issuance of Specific Licenses.

(1) A license application shall be approved if the Executive Secretary determines that:

(a) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these rules in a manner as to minimize danger to public health and safety or the environment;

(b) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or the environment;

(c) the applicant's facilities are permanently located in Utah, otherwise the applicant shall seek reciprocal recognition as required by Section R313-19-30;

(d) the issuance of the license will not be inimical to the health and safety of the public;

(e) the applicant satisfies applicable special requirements in Sections R313-22-50 and R313-22-75, and Rules R313-25, R313-32, R313-34, R313-36, or R313-38; and

(f) in the case of an application for a license to receive and possess radioactive material for commercial waste disposal by land burial, or for the conduct of other activities which the Executive Secretary determines will significantly affect the quality of the environment, the Executive Secretary, before commencement of construction of the plant or facility in which the activity will be conducted, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. The Executive Secretary shall respond to the application within 60 days. Commencement of construction prior to a response and conclusion shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility. As used in this paragraph the term "commencement of construction" means clearing of land, excavation, or other substantial action

that would adversely affect the environment of a site. The term does not mean site exploration, necessary borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

R313-22-34. Issuance of Specific Licenses.

(1) Upon a determination that an application meets the requirements of the Act and the rules of the Board, the Executive Secretary will issue a specific license authorizing the proposed activity in a form and containing conditions and limitations as the Executive Secretary deems appropriate or necessary.

(2) The Executive Secretary may incorporate in licenses at the time of issuance, additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of radioactive material subject to Rule R313-22 as he deems appropriate or necessary in order to:

(a) minimize danger to public health and safety or the environment;

(b) require reports and the keeping of records, and to provide for inspections of activities under the license as may be appropriate or necessary; and

(c) prevent loss or theft of material subject to Rule R313-22.

R313-22-35. Financial Assurance and Recordkeeping for Decommissioning.

(1) Applicants for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2001 ed., which is incorporated by reference, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall also be submitted when a combination of radionuclides is involved if R divided by 10^5 is greater than one, where R is defined here as the sum of the ratios of the quantity of each radionuclide to the applicable value in Appendix B of 10 CFR 30.1 through 30.72, 2001 ed., which is incorporated by reference.

(2) Applicants for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Subsection R313-22-35(4) shall either:

(a) submit a decommissioning funding plan as described in Subsection R313-22-35(5); or

(b) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Subsection R313-22-35(4) using one of the methods described in Subsection R313-22-35(6). For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6) shall be submitted to the Executive Secretary before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the Executive Secretary, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements in Subsection R313-22-35(6).

(3)(a) Holders of a specific license issued on or after January 1, 1995, which is of a type described in Subsections R313-22-35(1) or (2) shall provide financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(b) Holders of a specific license issued before January 1, 1995, and of a type described in Subsection R313-22-35(1) shall submit, on or before January 1, 1995, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in Section R313-22-35. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(c) Holders of a specific license issued before January 1, 1995, and of a type described in Subsection R313-22-35(2) shall submit, on or before January 1, 1995, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(d) A licensee who has submitted an application before January 1, 1995, for renewal of license in accordance with Section R313-22-37 shall provide financial assurance for decommissioning in accordance with Subsections R313-22-35(1) and (2). This assurance shall be submitted before January 1, 1997.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material:

TABLE

Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72, 2001 ed., which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1) divided by 10^4 is greater than one but R divided by 10^5 is less than or equal to one:	$750,000
Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72, 2001 ed., which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1) divided by 10^3 is greater than one but R divided by 10^4 is less than or equal to one:	$150,000
Greater than 10^{10} times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72, 2001 ed., which is incorporated by reference, in sealed sources or plated foils. For combination of radionuclides, if R, as defined in R313-22-35(1), divided by 10^{10} is greater than one:	$75,000

(5) A decommissioning funding plan shall contain a cost estimate for decommissioning and a description of the method

of assuring funds for decommissioning from Subsection R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning funding plan shall also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6).

(6) Financial assurance for decommissioning shall be provided by one or more of the following methods:

(a) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities;

(b) A surety method, insurance, or other guarantee method. These methods shall guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(8). A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of Section R313-22-35. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(9). A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of Section R313-22-35 or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. A surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

(i) the surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date the issuer notifies the Executive Secretary, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Executive Secretary within 30 days after receipt of notification of cancellation,

(ii) the surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the Executive Secretary. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency, and

(iii) the surety method or insurance shall remain in effect until the Executive Secretary has terminated the license;

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in Subsection R313-22-35(6)(b);

(d) In the case of Federal, State or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in Subsection R313-22-35(4) and indicating that funds for decommissioning will be obtained when necessary; or

(e) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(7) Persons licensed under Rule R313-22 shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), licensees shall transfer all records described in Subsections R313-22-35(7)(a) through (d) to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Executive Secretary considers important to decommissioning consists of the following:

(a) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(b) as-built drawings and modification of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(c) except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, including all of the following:

(i) all areas designated and formerly designated as restricted areas as defined under Section R313-12-3;

(ii) all areas outside of restricted areas that require documentation under Subsection R313-22-35(7)(a);

(iii) all areas outside of restricted areas where current and

previous wastes have been buried as documented under Section R313-15-1109; and

(iv) all areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in Sections R313-15-401 through R313-15-406, or apply for approval for disposal under Section R313-15-1002; and

(d) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(8) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), the parent company shall meet one of the following criteria:

(i) The parent company shall have all of the following:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

(B) Net working capital and tangible net worth each at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used;

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used; or

(ii) The parent company shall have all of the following:

(A) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

(B) Tangible net worth at least six times the current decommissioning cost estimate, or prescribed amount if a certification is used;

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if certification is used.

(b) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform the Executive Secretary within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(c)(i) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(ii) If the parent company no longer meets the requirements of Subsection R313-22-35(8)(a) the licensee shall send notice to the Executive Secretary of intent to establish alternative financial assurance as specified in Section R313-22-35. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(d) The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(i) The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the Executive Secretary. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the Executive Secretary, as evidenced by the return receipts.

(ii) If the licensee fails to provide alternate financial assurance as specified in Section R313-22-35 within 90 days after receipt by the licensee and Executive Secretary of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(iii) The parent company guarantee and financial test provisions shall remain in effect until the Executive Secretary has terminated the license.

(iv) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the Executive Secretary. An acceptable trustee includes an appropriate State or Federal Government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(9) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), a company shall meet all of the following criteria:

(i) Tangible net worth at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(ii) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(iii) A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

(b) To pass the financial test, a company shall meet all of the following additional requirements:

(i) The company shall have at least one class of equity securities registered under the Securities Exchange Act of 1934;

(ii) The company's independent certified public accountant shall have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that

procedure, the licensee shall inform the Executive Secretary within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and

(iii) After the initial financial test, the company shall repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(c) If the licensee no longer meets the requirements of Subsection R313-22-35(9)(a), the licensee shall send immediate notice to the Executive Secretary of its intent to establish alternate financial assurance as specified in Section R313-22-35 within 120 days of such notice.

(d) The terms of a self-guarantee which an applicant or licensee furnishes shall provide that:

(i) The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Executive Secretary. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Executive Secretary, as evidenced by the return receipt.

(ii) The licensee shall provide alternative financial assurance as specified in Section R313-22-35 within 90 days following receipt by the Executive Secretary of a notice of a cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the Executive Secretary has terminated the license or until another financial assurance method acceptable to the Executive Secretary has been put in effect by the licensee.

(iv) The licensee shall promptly forward to the Executive Secretary and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of such fact to the Executive Secretary within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of Subsection R313-22-35(9)(a).

(vi) The applicant or licensee shall provide to the Executive Secretary a written guarantee, a written commitment by a corporate officer, which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Board, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

R313-22-36. Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas.

(1) A specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under Section R313-22-37 no less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license, the existing license expires at the end of the day on which the Executive Secretary makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(2) A specific license revoked by the Executive Secretary expires at the end of the day on the date of the Executive Secretary's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by an Order issued by the Executive Secretary.

(3) A specific license continues in effect, beyond the expiration date if necessary, with respect to possession of radioactive material until the Executive Secretary notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(a) limit actions involving radioactive material to those related to decommissioning; and

(b) continue to control entry to restricted areas until they are suitable for release so that there is not an undue hazard to public health and safety or the environment.

(4) Within 60 days of the occurrence of any of the following, a licensee shall provide notification to the Executive Secretary in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release so that there is not an undue hazard to public health and safety or the environment, or submit within 12 months of notification a decommissioning plan, if required by Subsection R313-22-36(7), and begin decommissioning upon approval of that plan if:

(a) the license has expired pursuant to Subsections R313-22-36(1) or (2); or

(b) the licensee has decided to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release because of an undue hazard to public health and safety or the environment; or

(c) no principal activities under the license have been conducted for a period of 24 months; or

(d) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release because of an undue hazard to public health and safety or the environment.

(5) Coincident with the notification required by Subsection R313-22-36(4), the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to Section R313-22-35 in conjunction with a license issuance or renewal or as required by Section R313-22-36. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to Subsection R313-22-36(7)(d)(v).

(a) A licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so on or before August 15, 1997.

(b) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as

decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Executive Secretary.

(6) The Executive Secretary may grant a request to extend the time periods established in Subsection R313-22-36(4) if the Executive Secretary determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to Subsection R313-22-36(4). The schedule for decommissioning set forth in Subsection R313-22-36(4) may not commence until the Executive Secretary has made a determination on the request.

(7)(a) A decommissioning plan shall be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Executive Secretary and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(b) The Executive Secretary may approve an alternate schedule for submittal of a decommissioning plan required pursuant to Subsection R313-22-36(4) if the Executive Secretary determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(c) Procedures such as those listed in Subsection R313-22-36(7)(a) with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(d) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) a description of planned decommissioning activities;

(iii) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) a description of the planned final radiation survey; and

(v) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(vi) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in Subsection R313-22-36(8).

(e) The proposed decommissioning plan will be approved by the Executive Secretary if the information therein demonstrates that the decommissioning will be completed as soon as practical and that the health and safety of workers and the public will be adequately protected.

(8)(a) Except as provided in Subsection R313-22-36(9), licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practical but no later than 24 months following the initiation of decommissioning.

(b) Except as provided in Subsection R313-22-36(9), when decommissioning involves the entire site, the licensee shall request license termination as soon as practical but no later than 24 months following the initiation of decommissioning.

(9) The Executive Secretary may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Executive Secretary determines that the alternative is warranted by consideration of the following:

(a) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(b) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(c) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(d) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(e) other site-specific factors which the Executive Secretary may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(10) As the final step in decommissioning, the licensee shall:

(a) certify the disposition of all licensed material, including accumulated wastes, by submitting a completed Form DRC-14 or equivalent information; and

(b) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406. The licensee shall, as appropriate:

(i) report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters--removable and fixed--for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(11) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Executive

Secretary determines that:

(a) radioactive material has been properly disposed;

(b) reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c) documentation is provided to the Executive Secretary that:

(i) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406; or

(ii) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406.

R313-22-37. Renewal of Licenses.

Application for renewal of a specific license shall be filed on a form prescribed by the Executive Secretary and in accordance with Section R313-22-32.

R313-22-38. Amendment of Licenses at Request of Licensee.

Applications for amendment of a license shall be filed in accordance with Section R313-22-32 and shall specify the respects in which the licensee desires the license to be amended and the grounds for the amendment.

R313-22-39. Executive Secretary Action on Applications to Renew or Amend.

In considering an application by a licensee to renew or amend the license, the Executive Secretary will use the criteria set forth in Sections R313-22-33, R313-22-50, and R313-22-75 and in Rules R313-25, R313-32, R313-34, R313-36, or R313-38, as applicable.

R313-22-50. Special Requirements for Specific Licenses of Broad Scope.

Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons who are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(1) The different types of broad licenses are set forth below:

(a) A "Type A specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of the radioactive material specified in the license, but not exceeding quantities specified in the license, for any authorized purpose. The quantities specified are usually in the multicurie range.

(b) A "Type B specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in Section R313-22-100 for any authorized purpose. The possession limit for a Type B broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in Section R313-22-100, Column I. If two or more radionuclides are possessed thereunder, the possession limits are determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Section R313-22-100, Column I, for that radionuclide. The sum of the ratios for the radionuclides possessed under the license shall not exceed unity.

(c) A "Type C specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in Section R313-22-100, for any authorized purpose. The possession limit for a Type C broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in Section R313-22-100, Column II. If two or more radionuclides are possessed thereunder, the possession limits are determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Section R313-22-100, Column II, for that radionuclide. The sum of the ratios for the radionuclides possessed under the license shall not exceed unity.

(2) An application for a Type A specific license of broad scope shall be approved if all of the following are complied with:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant has engaged in a reasonable number of activities involving the use of radioactive material; and

(c) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) the establishment of a radiation safety committee composed of such persons as a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive material;

(ii) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(iii) the establishment of appropriate administrative procedures to assure:

(A) control of procurement and use of radioactive material,

(B) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures, and

(C) review, approval, and recording by the radiation safety committee of safety evaluations of proposed uses prepared in accordance with Subsection R313-22-50(2)(c)(iii)(B) prior to use of the radioactive material.

(3) An application for a Type B specific license of broad scope shall be approved if all of the following are complied with:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and

management review that are necessary to assure safe operations, including:

(i) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(ii) the establishment of appropriate administrative procedures to assure:

(A) control of procurement and use of radioactive material,

(B) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures, and

(C) review, approval, and recording by the radiation safety officer of safety evaluations of proposed uses prepared in accordance with Subsection R313-22-50(3)(b)(iii)(B) prior to use of the radioactive material.

(4) An application for a Type C specific license of broad scope shall be approved, if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant submits a statement that radioactive material will be used only by, or under the direct supervision of individuals, who have received:

(i) a college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering; and

(ii) at least forty hours of training and experience in the safe handling of radioactive material, and in the characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation, and biological hazards of exposure to radiation appropriate to the type and forms of radioactive material to be used; and

(c) the applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, recordkeeping, material control and accounting, and management review necessary to assure safe operations.

(5) Specific licenses of broad scope are subject to the following conditions:

(a) unless specifically authorized by the Executive Secretary, persons licensed pursuant to this section shall not:

(i) conduct tracer studies in the environment involving direct release of radioactive material;

(ii) receive, acquire, own, possess, use, or transfer devices containing 100,000 curies (3.7 PBq) or more of radioactive material in sealed sources used for irradiation of materials;

(iii) conduct activities for which a specific license issued by the Executive Secretary under Section R313-22-75, and Rules R313-25, R313-32 or R313-36 is required; or

(iv) add or cause the addition of radioactive material to a food, beverage, cosmetic, drug or other product designed for ingestion or inhalation by, or application to, a human being.

(b) Type A specific licenses of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety committee.

(c) Type B specific license of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety officer.

(d) Type C specific license of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used, by or under the direct supervision of, individuals who satisfy the requirements of Subsection R313-22-50(4).

R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.

(1) Licensing the introduction of radioactive material into products in exempt concentrations.

(a) In addition to the requirements set forth in Section R313-22-33, a specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another to be transferred to persons exempt under Subsection R313-19-13(2)(a) will be issued if:

(i) the applicant submits a description of the product or material into which the radioactive material will be introduced, intended use of the radioactive material and the product or material into which it is introduced, method of introduction, initial concentration of the radioactive material in the product or material, control methods to assure that no more than the specified concentration is introduced into the product or material, estimated time interval between introduction and transfer of the product or material, and estimated concentration of the radioactive material in the product or material at the time of transfer; and

(ii) the applicant provides reasonable assurance that the concentrations of radioactive material at the time of transfer will not exceed the concentrations in Section R313-19-70, that reconcentration of the radioactive material in concentrations exceeding those in Section R313-19-70 is not likely, that use of lower concentrations is not feasible, and that the product or material is not likely to be incorporated in any food, beverage, cosmetic, drug or other commodity or product designed for ingestion or inhalation by, or application to a human being.

(b) Persons licensed under Subsection R313-22-75(1) shall file an annual report with the Executive Secretary which shall identify the type and quantity of products or materials into which radioactive material has been introduced during the reporting period; name and address of the person who owned or possessed the product and material, into which radioactive material has been introduced, at the time of introduction; the type and quantity of radionuclide introduced into the product or material; and the initial concentrations of the radionuclide in the product or material at time of transfer of the radioactive material by the licensee. If no transfers of radioactive material have been made pursuant to Subsection R313-22-75(1) during the reporting period, the report shall so indicate. The report shall cover the year ending June 30, and shall be filed within thirty days thereafter.

(2) Licensing the distribution of radioactive material in exempt quantities. Authority to transfer possession or control by the manufacturer, processor or producer of equipment,

devices, commodities or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons who are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(a) An application for a specific license to distribute naturally occurring and accelerator-produced radioactive material (NARM) to persons exempted from these rules pursuant to Subsection R313-19-13(2)(b) will be approved if:

(i) the radioactive material is not contained in a food, beverage, cosmetic, drug or other commodity designed for ingestion or inhalation by, or application to, a human being;

(ii) the radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into a manufactured or assembled commodity, product, or device intended for commercial distribution; and

(iii) the applicant submits copies of prototype labels and brochures and the Executive Secretary approves the labels and brochures;

(b) The license issued under Subsection R313-22-75(2)(a) is subject to the following conditions:

(i) No more than ten exempt quantities shall be sold or transferred in a single transaction. However, an exempt quantity may be composed of fractional parts of one or more of the exempt quantities provided the sum of the fractions shall not exceed unity.

(ii) Exempt quantities shall be separated and individually packaged. No more than ten packaged exempt quantities shall be contained in any outer package for transfer to persons exempt pursuant to Subsection R313-19-13(2)(b). The outer package shall not allow the dose rate at the external surface of the package to exceed 0.5 millirem (5.0 uSv) per hour.

(iii) The immediate container of a quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label which:

(A) identifies the radionuclide and the quantity of radioactivity; and

(B) bears the words "Radioactive Material."

(iv) In addition to the labeling information required by Subsection R313-22-75(2)(b)(iii), the label affixed to the immediate container, or an accompanying brochure, shall:

(A) state that the contents are exempt from Licensing State requirements;

(B) bear the words "Radioactive Material - Not for Human Use - Introduction into Foods, Beverages, Cosmetics, Drugs, or Medicinals, or into Products Manufactured for Commercial Distribution is Prohibited - Exempt Quantities Should Not Be Combined;" and

(C) set forth appropriate additional radiation safety precautions and instructions relating to the handling, use, storage and disposal of the radioactive material.

(c) Persons licensed under Subsection R313-22-75(2) shall maintain records identifying, by name and address, persons to whom radioactive material is transferred for use under Subsection R313-19-13(2)(b) or the equivalent regulations of a Licensing State, and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of radionuclides transferred under the specific license shall be filed with the Executive Secretary. Reports shall cover the year ending June 30, and shall be filed within thirty days thereafter. If no transfers of radioactive material have been made pursuant to Subsection R313-22-75(2) during the reporting period, the report shall so indicate.

(3) Licensing the incorporation of naturally occurring and accelerator-produced radioactive material (NARM) into gas and aerosol detectors. An application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt under Subsection R313-19-13(2)(c)(iii) will be approved if the application satisfies requirements equivalent to those contained in 10 CFR 32.26, 2001 ed. The maximum quantity of radium-226 in each device shall not exceed 0.1 microcurie (3.7 kBq).

(4) Licensing the manufacture and distribution of devices to persons generally licensed under Subsection R313-21-22(4).

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under Subsection R313-21-22(4) or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(i) the applicant satisfies the general requirements of Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(A) the device can be safely operated by persons not having training in radiological protection,

(B) under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that a person will receive in one year, a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1), and

(C) under accident conditions, such as fire and explosion, associated with handling, storage and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

TABLE

Whole body; head and trunk; active blood-forming organs; gonads; or lens of eye	150.0 mSv (15 rems)
Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter	2.0 Sv (200 rems)
Other organs	500.0 mSv (50 rems); and

(iii) each device bears a durable, legible, clearly visible label or labels approved by the Executive Secretary, which contain in a clearly identified and separate statement:

(A) instructions and precautions necessary to assure safe installation, operation and servicing of the device; documents

such as operating and service manuals may be identified in the label and used to provide this information,

(B) the requirement, or lack of requirement, for leak testing, or for testing an "on-off" mechanism and indicator, including the maximum time interval for testing, and the identification of radioactive material by radionuclide, quantity of radioactivity, and date of determination of the quantity, and

(C) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) "The receipt, possession, use and transfer of this device, Model No. ....., Serial No. ....., are subject to a general license or the equivalent, and the regulations of the U.S. Nuclear Regulatory Commission or a state with which the U.S. Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION -RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(II) "The receipt, possession, use and transfer of this device, Model No. ....., Serial No. ....., are subject to a general license or the equivalent, and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(b) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Executive Secretary will consider information which includes, but is not limited to:

(i) primary containment, or source capsule;

(ii) protection of primary containment;

(iii) method of sealing containment;

(iv) containment construction materials;

(v) form of contained radioactive material;

(vi) maximum temperature withstood during prototype tests;

(vii) maximum pressure withstood during prototype tests;

(viii) maximum quantity of contained radioactive material;

(ix) radiotoxicity of contained radioactive material; and

(x) operating experience with identical devices or similarly designed and constructed devices.

(c) In the event the applicant desires that the general licensee under Subsection R313-21-22(4), or under equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with this activity or activities, and basis for these estimates. The submitted information shall demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1).

(d) Persons licensed under Subsection R313-22-75(4) to distribute devices to generally licensed persons shall:

(i) furnish a copy of the general license contained in Subsection R313-21-22(4) to each person to whom the person directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license contained in Subsection R313-21-22(4);

(ii) furnish a copy of the general license contained in the U.S. Nuclear Regulatory Commission's, Agreement State's, or Licensing State's regulation equivalent to Subsection R313-21-22(4), or alternatively, furnish a copy of the general license contained in Subsection R313-21-22(4) to each person to whom he directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license of the U.S. Nuclear Regulatory Commission, the Agreement State or the Licensing State. If a copy of the general license in Subsection R313-21-22(4) is furnished to such a person, it shall be accompanied by a note explaining that the use of the device is regulated by the U.S. Nuclear Regulatory Commission, Agreement State or Licensing State under requirements substantially the same as those in Subsection R313-21-22(4);

(iii) report to the Executive Secretary all transfers of such devices to persons for use under the general license in Subsection R313-21-22(4). The reports shall identify the general licensee by name and address, an individual by name or position who may constitute a point of contact between the Executive Secretary and the general licensee, the type and model number of device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user. If no transfers have been made to persons generally licensed under Subsection R313-21-22(4) during the reporting period, the report shall so indicate. The report shall cover each calendar quarter and shall be filed within thirty days thereafter;

(iv) furnish reports to other agencies.

(A) Report to the U.S. Nuclear Regulatory Commission all

transfers of those devices to persons for use under the U.S. Nuclear Regulatory Commission general license in 10 CFR 31.5, 2001 ed.

(B) Report to the responsible State agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(4) for use under a general license in that State's regulations equivalent to Subsection R313-21-22(4).

(C) The reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the responsible agency and general licensee, the type and model of the device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user. The report shall be submitted within thirty days after the end of each calendar quarter in which a device is transferred to the generally licensed person.

(D) If transfers have not been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission.

(E) If transfers have not been made to general licensees within a particular state during the reporting period, this information shall be reported to the responsible state agency upon request of that agency; and

(v) keep records showing the name, address and the point of contact for each general licensee to whom the person directly or through an intermediate person transfers radioactive material in devices for use pursuant to the general license provided in Subsection R313-21-22(4), or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State. The records shall show the date of each transfer, the radionuclide and the quantity of radioactivity in each device transferred, the identity of intermediate persons, and compliance with the report requirements of Subsection R313-22-75(4).

(5) Special requirements for the manufacture, assembly or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to persons generally licensed under Subsection R313-21-22(5) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.53 through 32.56 and 32.101, 2001 ed, or their equivalent.

(6) Special requirements for license to manufacture calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection R313-21-22(7). An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under Subsection R313-21-22(7) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.57 through 32.59, 32.102 and 10 CFR 70.39, 2001 ed., or their equivalent.

(7) Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection R313-21-22(9) will be approved if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding ten microcuries (370.0 kBq) each;

(ii) iodine-131 in units not exceeding ten microcuries (370.0 kBq) each;

(iii) carbon-14 in units not exceeding ten microcuries (370.0 kBq) each;

(iv) hydrogen-3 (tritium) in units not exceeding 50 microcuries (1.85 MBq) each;

(v) iron-59 in units not exceeding 20 microcuries (740.0 kBq) each;

(vi) cobalt-57 in units not exceeding ten microcuries (370.0 kBq) each;

(vii) selenium-75 in units not exceeding ten microcuries (370.0 kBq) each; or

(viii) mock iodine-125 in units not exceeding 0.05 microcurie (1.85 kBq) of iodine-129 and 0.005 microcurie (185.0 Bq) of americium-241 each;

(c) prepackaged units bear a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed ten microcuries (370.0 kBq) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 50 microcuries (1.85 MBq) of hydrogen-3 (tritium); 20 microcuries (740.0 kBq) of iron-59; or Mock Iodine-125 in units not exceeding 0.05 microcuries (1.85 kBq) of iodine-129 and 0.005 microcurie (185.0 Bq) of americium-241 each; and

(ii) displaying the radiation caution symbol described in Section R313-15-901 and the words, "CAUTION, RADIOACTIVE MATERIAL", and "Not for Internal or External Use in Humans or Animals";

(d) one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(i) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the U.S. Nuclear Regulatory Commission or of a state with which the U.S. Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

.....
Name of Manufacturer"

(ii) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

.....

Name of Manufacturer"

(e) the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in Section R313-15-1001.

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection R313-21-22(10) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the criteria of 10 CFR 32.61, 32.62, 32.103, 2001 ed. are met.

(9) Manufacture and distribution of radiopharmaceuticals containing radioactive material for medical use under group licenses.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule R313-32 will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits evidence that the applicant is at least one of the following:

(A) registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer;

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a State Board of Pharmacy; or

(D) operating as a nuclear pharmacy within a medical institution.

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant satisfies the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsections R313-22-75(9)(a)(ii)(C) or (D):

(i) May prepare radioactive drugs for medical use, as defined in Section R313-32-2, provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and (iii), or an individual under the supervision of an authorized nuclear pharmacist as specified in Section R313-32-25.

(ii) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) this individual qualifies as an authorized nuclear pharmacist as defined in Section R313-32-2;

(B) this individual meets the requirements specified in Subsection R313-32-980(2) and Section R313-32-972 and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iii).

(iii) The actions authorized in Subsections R313-22-75(9)(b)(i) and (ii) are permitted in spite of more restrictive language in license conditions.

(iv) May designate a pharmacist, as defined in Section R313-32-2, as an authorized nuclear pharmacist if the individual is identified as of January 1, 1997 as an "authorized user" on a nuclear pharmacy license issued by the Executive Secretary under Subsection R313-22-75(9).

(v) Shall provide to the Executive Secretary a copy of each individual's certification by the Board of Pharmaceutical Specialties, the U.S. Nuclear Regulatory Commission or Agreement State license, or the permit issued by a licensee of broad scope, and a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and (B), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and

geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or Federal, and State requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed pursuant to Section R313-32-18 for use as a calibration or reference source or for the uses listed in Sections R313-32-400 and R313-32-500 will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount,

(ii) details of design and construction of the source or device,

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,

(iv) for devices containing radioactive material, the radiation profile of a prototype device,

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,

(vi) procedures and standards for calibrating sources and devices,

(vii) legend and methods for labeling sources and devices as to their radioactive content, and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the Executive Secretary for distribution to persons licensed pursuant to Sections R313-32-18, R313-32-400, and R313-32-500 or under equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State; provided that labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(d) in the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(e) in determining the acceptable interval for test of leakage of radioactive material, the Executive Secretary shall consider information that includes, but is not limited to:

(i) primary containment or source capsule,

(ii) protection of primary containment,

(iii) method of sealing containment,

(iv) containment construction materials,

(v) form of contained radioactive material,

(vi) maximum temperature withstood during prototype tests,

(vii) maximum pressure withstood during prototype tests,

(viii) maximum quantity of contained radioactive material,

(ix) radiotoxicity of contained radioactive material, and

(x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(5) or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1); and

(iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Executive Secretary will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Executive Secretary may deny an application for a specific license under Subsection R313-22-75(11) if the end use of the industrial product or device cannot be reasonably foreseen.

(d) Persons licensed pursuant to Subsection R313-22-75(11)(a) shall:

(i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(A) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State;

(iii) assure that the uranium before being installed in each product or device has been impressed with the following legend clearly legible through a plating or other covering: "Depleted Uranium";

(iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

(A) a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DRC-12; or

(B) a copy of the general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(5) and a copy of the U.S. Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DRC-12 with a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in Subsection R313-21-21(5);

(v) report to the Executive Secretary all transfers of industrial products or devices to persons for use under the general license in Subsection R313-21-21(5). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Executive Secretary and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of the calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under Subsection R313-21-21(5) during the reporting period, the report shall so indicate;

(vi) provide certain other reports as follows:

(A) report to the U.S. Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the U.S. Nuclear Regulatory Commission general license in 10 CFR 40.25, 2001 ed.;

(B) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(5),

(C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person,

(D) if no transfers have been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission, and

(E) if no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and

(vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(5) or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device transferred, and compliance with the report requirements of Subsection R313-22-75(11).

R313-22-90. Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release. Refer to Subsection R313-22-32(8).

TABLE

Radioactive Material(1)	Release Fraction	Quantity (curies)
Actinium-228	0.001	4,000
Americium-241	.001	2
Americium-242	.001	2
Americium-243	.001	2
Antimony-124	.01	4,000
Antimony-126	.01	6,000
Barium-133	.01	10,000
Barium-140	.01	30,000
Bismuth-207	.01	5,000
Bismuth-210	.01	600
Cadmium-109	.01	1,000
Cadmium-113	.01	80
Calcium-45	.01	20,000
Californium-252 (20 mg)	.001	9
Carbon-14	.01 Non CO	50,000
Cerium-141	.01	10,000
Cerium-144	.01	300
Cesium-134	.01	2,000
Cesium-137	.01	3,000
Chlorine-36	.5	100
Chromium-51	.01	300,000
Cobalt-60	.001	5,000
Copper-64	.01	200,000
Curium-242	.001	60
Curium-243	.001	3
Curium-244	.001	4
Curium-245	.001	2
Europium-152	.01	500
Europium-154	.01	400
Europium-155	.01	3,000
Germanium-68	.01	2,000
Gadolinium-153	.01	5,000
Gold-198	.01	30,000
Hafnium-172	.01	400
Hafnium-181	.01	7,000
Holmium-166m	.01	100
Hydrogen-3	.5	20,000
Iodine-125	.5	10
Iodine-131	.5	10
Indium-114m	.01	1,000
Iridium-192	.001	40,000
Iron-55	.01	40,000
Iron-59	.01	7,000
Krypton-85	1.0	6,000,000
Lead-210	.01	8

Manganese-56	.01	60,000
Mercury-203	.01	10,000
Molybdenum-99	.01	30,000
Neptunium-237	.001	2
Nickel-63	.01	20,000
Niobium-94	.01	300
Phosphorus-32	.5	100
Phosphorus-33	.5	1,000
Polonium-210	.01	10
Potassium-42	.01	9,000
Promethium-145	.01	4,000
Promethium-147	.01	4,000
Ruthenium-106	.01	200
Samarium-151	.01	4,000
Scandium-46	.01	3,000
Selenium-75	.01	10,000
Silver-110m	.01	1,000
Sodium-22	.01	9,000
Sodium-24	.01	10,000
Strontium-89	.01	3,000
Strontium-90	.01	90
Sulfur-35	.5	900
Technetium-99	.01	10,000
Technetium-99m	.01	400,000
Tellurium-127m	.01	5,000
Tellurium-129m	.01	5,000
Terbium-160	.01	4,000
Thulium-170	.01	4,000
Tin-113	.01	10,000
Tin-123	.01	3,000
Tin-126	.01	1,000
Titanium-44	.01	100
Vanadium-48	.01	7,000
Xenon-133	1.0	900,000
Yttrium-91	.01	2,000
Zinc-65	.01	5,000
Zirconium-93	.01	400
Zirconium-95	.01	5,000
Any other beta-gamma emitter	.01	10,000
Mixed fission products	.01	1,000
Mixed corrosion products	.01	10,000
Contaminated equipment, beta-gamma	.001	10,000
Irradiated material, any form other than solid noncombustible	.01	1,000
Irradiated material, solid noncombustible	.001	10,000
Mixed radioactive waste, beta-gamma	.01	1,000
Packaged mixed waste, beta-gamma(2)	.001	10,000
Any other alpha emitter	.001	2
Contaminated equipment, alpha	.0001	20
Packaged waste, alpha(2)	.0001	20
Combinations of radioactive materials listed above(1)	-----	-----

(1) For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Section R313-22-90 exceeds one.

(2) Waste packaged in Type B containers does not require an emergency plan.

R313-22-100. Limits for Broad Licenses. Refer to Section R313-22-50.

TABLE

RADIOACTIVE MATERIAL	COLUMN I	COLUMN II
	CURIES	
Antimony-122	1	0.01
Antimony-124	1	0.01
Antimony-125	1	0.01
Arsenic-73	10	0.1
Arsenic-74	1	0.01
Arsenic-76	1	0.01
Arsenic-77	10	0.1
Barium-131	10	0.1
Barium-140	1	0.01
Beryllium-7	10	0.1
Bismuth-210	0.1	0.001
Bromine-82	10	0.1
Cadmium-109	1	0.01
Cadmium-115m	1	0.01
Cadmium-115	10	0.1
Calcium-45	1	0.01
Calcium-47	10	0.1
Carbon-14	100	1
Cerium-141	10	0.1
Cerium-143	10	0.1
Cerium-144	0.1	0.001
Cesium-131	100	1
Cesium-134m	100	1
Cesium-134	0.1	0.001
Cesium-135	1	0.01
Cesium-136	10	0.1
Cesium-137	0.1	0.001
Chlorine-36	1	0.01
Chlorine-38	100	1
Chromium-51	100	1
Cobalt-57	10	0.1
Cobalt-58m	100	1
Cobalt-58	1	0.01
Cobalt-60	0.1	0.001
Copper-64	10	0.1
Dysprosium-165	100	1
Dysprosium-166	10	0.1
Erbium-169	10	0.1
Erbium-171	10	0.1
Europium-152 (9.2h)	10	0.1
Europium-152 (13y)	0.1	0.001
Europium-154	0.1	0.001
Europium-155	1	0.01
Fluorine-18	100	1
Gadolinium-153	1	0.01
Gadolinium-159	10	0.1
Gallium-72	10	0.1
Germanium-71	100	1
Gold-198	10	0.1
Gold-199	10	0.1
Hafnium-181	1	0.01
Holmium-166	10	0.1
Hydrogen-3	100	1
Indium-113m	100	1
Indium-114m	1	0.01
Indium-115m	100	1
Indium-115	1	0.01
Iodine-125	0.1	0.001
Iodine-126	0.1	0.001
Iodine-129	0.1	0.01
Iodine-131	0.1	0.001
Iodine-132	10	0.1
Iodine-133	1	0.01
Iodine-134	10	0.1
Iodine-135	1	0.01
Iridium-192	1	0.01
Iridium-194	10	0.1
Iron-55	10	0.1
Iron-59	1	0.01
Krypton-85	100	1
Krypton-87	10	0.1
Lanthanum-140	1	0.01
Lutetium-177	10	0.1
Manganese-52	1	0.01
Manganese-54	1	0.01
Manganese-56	10	0.1
Mercury-197m	10	0.1
Mercury-197	10	0.1
Mercury-203	1	0.01
Molybdenum-99	10	0.1
Neodymium-147	10	0.1
Neodymium-149	10	0.1
Nickel-59	10	0.1
Nickel-63	1	0.01
Nickel-65	10	0.1
Niobium-93m	1	0.01
Niobium-95	1	0.01
Niobium-97	100	1
Osmium-185	1	0.01
Osmium-191m	100	1
Osmium-191	10	0.1
Osmium-193	10	0.1
Palladium-103	10	0.1
Palladium-109	10	0.1
Phosphorus-32	1	0.01
Platinum-191	10	0.1
Platinum-193m	100	1
Platinum-193	10	0.1
Platinum-197m	100	1
Platinum-197	10	0.1
Polonium-210	0.01	0.0001
Potassium-42	1	0.01
Praseodymium-142	10	0.1
Praseodymium-143	10	0.1
Promethium-147	1	0.01

Promethium-149	10	0.1
Radium-226	0.01	0.0001
Rhenium-186	10	0.1
Rhenium-188	10	0.1
Rhodium-103m	1,000	10
Rhodium-105	10	0.1
Rubidium-86	1	0.01
Rubidium-87	1	0.01
Ruthenium-97	100	1
Ruthenium-103	1	0.01
Ruthenium-105	10	0.1
Ruthenium-106	0.1	0.001
Samarium-151	1	0.01
Samarium-153	10	0.1
Scandium-46	1	0.01
Scandium-47	10	0.1
Scandium-48	1	0.01
Selenium-75	1	0.01
Silicon-31	10	0.1
Silver-105	1	0.01
Silver-110m	0.1	0.001
Silver-111	10	0.1
Sodium-22	0.1	0.001
Sodium-24	1	0.01
Strontium-85m	1,000	10
Strontium-85	1	0.01
Strontium-89	1	0.01
Strontium-90	0.01	0.0001
Strontium-91	10	0.1
Strontium-92	10	0.1
Sulphur-35	10	0.1
Tantalum-182	1	0.01
Technetium-96	10	0.1
Technetium-97m	10	0.1
Technetium-97	10	0.1
Technetium-99m	100	1
Technetium-99	1	0.01
Tellurium-125m	1	0.01
Tellurium-127m	1	0.01
Tellurium-127	10	0.1
Tellurium-129m	1	0.01
Tellurium-129	100	1
Tellurium-131m	10	0.1
Tellurium-132	1	0.01
Terbium-160	1	0.01
Thallium-200	10	0.1
Thallium-201	10	0.1
Thallium-202	10	0.1
Thallium-204	1	0.01
Thulium-170	1	0.01
Thulium-171	1	0.01
Tin-113	1	0.01
Tin-125	1	0.01
Tungsten-181	1	0.01
Tungsten-185	1	0.01
Tungsten-187	10	0.1
Vanadium-48	1	0.01
Xenon-131m	1,000	10
Xenon-133	100	1
Xenon-135	100	1
Ytterbium-175	10	0.1
Yttrium-90	1	0.01
Yttrium-91	1	0.01
Yttrium-92	10	0.1
Yttrium-93	1	0.01
Zinc-65	1	0.01
Zinc-69m	10	0.1
Zinc-69	100	1
Zirconium-93	1	0.01
Zirconium-95	1	0.01
Zirconium-97	1	0.01
Any radioactive material other than source material, special nuclear material, or alpha-emitting radioactive material not listed above	0.1	0.001

R313-22-210. Registration of Product Information.

Licensees who manufacture or initially distribute a sealed source or device containing a sealed source whose product is intended for use under a specific license or general license are deemed to have provided reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and the environment if the sealed source or device has been evaluated in accordance with 10 CFR 32.210, 2001 ed. or equivalent regulations of an Agreement State.

KEY: specific licenses, decommissioning, broad scope, radioactive material

September 14, 2001 19-3-104

Notice of Continuation May 1, 1997 19-3-108

R313. Environmental Quality, Radiation Control.
R313-26. Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities.
R313-26-1. Purpose and Scope.

The purpose of this rule is to establish procedures, criteria, and terms and conditions upon which the Executive Secretary issues permits to generators for accessing a land disposal facility located within the State. This rule also contains requirements for shippers. The requirements of Rule R313-26 are in addition to, and not in substitution for, other applicable requirements of these rules.

R313-26-2. Definitions.

As used in Rule R313-26, the following definitions apply:

"Broker" means a person who performs one or more of the following functions for a generator: arranges for transportation of the radioactive waste; collects or consolidates shipments of radioactive waste; or processes radioactive waste in some manner. "Broker" does not include a carrier whose sole function is to transport the radioactive waste.

"Disposal" means the isolation of wastes from the biosphere by placing them in a land disposal facility.

"Generator" means a person who:

(a) possesses any material or component:

(i) that contains radioactivity or is radioactively contaminated; and

(ii) for which the person foresees no further use; and

(b) transfers the material or component to:

(i) a commercial radioactive waste treatment or disposal facility; or

(ii) a broker.

"Generator Site Access Permit" means an authorization to deliver radioactive wastes to a land disposal facility located within the State.

"Land disposal facility" has the same meaning as that given in Section R313-25-2.

"Manifest" means the document, as defined in Appendix G of 10 CFR 20,used for identifying the quantity, composition, origin, and destination of radioactive waste during its transport to a disposal facility.

"Packager" means broker as defined in Section R313-26-2.

"Radioactive waste" means any material that contains radioactivity or is radioactively contaminated and is intended for ultimate disposal at a licensed land disposal facility in Utah.

"Shipper" means the person who offers radioactive waste for transportation, typically consigning this type of waste to a broker or land disposal facility.

R313-26-3. Generator Site Access Permits.

A generator or broker shall obtain a Generator Site Access Permit from the Executive Secretary before transferring radioactive waste to a land disposal facility in Utah.

(1) Generator Site Access Permit applications shall be filed on a form prescribed by the Executive Secretary.

(2) Applications shall be received by the Executive Secretary at least 30 days prior to any shipments being delivered to a land disposal facility in Utah.

(3) Each Generator Site Access Permit application shall include a certification to the Executive Secretary that the shipper shall comply with all applicable State or Federal laws, administrative rules and regulations, licenses, or license conditions of the land disposal facility regarding the packaging, transportation, storage, disposal and delivery of radioactive wastes.

(4) Generator Site Access Permit fees shall be assessed annually by the Executive Secretary based on the following classifications:

(a) Generators shipping more than 1000 cubic feet of radioactive waste annually to a land disposal facility in Utah.

(b) Generators shipping 1000 cubic feet or less of radioactive waste annually to a land disposal facility in Utah.

(c) Brokers shipping radioactive waste to a land disposal facility in Utah.

(5) Generator Site Access Permits shall be valid for a maximum of one year from the date of issuance. The Executive Secretary may modify individual Generator Site Access Permit terms and prorate the annual fees accordingly for administrative purposes.

(6) Generator Site Access Permits may be renewed by filing a new application with the Executive Secretary. To ensure timely renewal, generators and brokers shall submit applications, for Generator Site Access Permit renewal, a minimum of 30 days prior to the expiration date of their Generator Site Access Permit.

(7) Generator Site Access Permit fees are not refundable.

(8) Transfer of a Generator Site Access Permit shall be approved by the Executive Secretary.

(9) The number of Generator Site Access Permits required by each generator shall be determined by the following requirements:

(a) Generators who own multiple facilities within the same state may apply for one Generator Site Access Permit, provided the same contact person within the generator's company shall be responsible for responding to the Executive Secretary for matters pertaining to the waste shipments.

(b) Facilities which are owned by the same generator and located in different states shall obtain separate Generator Site Access Permits.

(c) Persons who both generate and broker wastes shall obtain separate Generator Site Access Permits.

R313-26-4. Shipper's Requirements.

(1) The shipper shall provide the Executive Secretary a copy of the Nuclear Regulatory Commission's "Uniform Low Level Radioactive Waste Manifest" for shipments consigned for disposal within Utah.

(2) The manifest shall be delivered to the Executive Secretary prior to the shipment arriving at the disposal site, but not more than thirty days prior to shipment departure.

(3) The generator's and broker's Generator Site Access Permit numbers shall be documented on the manifest.

(4) Generators and brokers shall ensure that all Generator Site Access Permits are current prior to shipment of waste to a land disposal facility located in the state, and that the waste will arrive at the land disposal facility prior to the expiration date of the Generator Site Access Permits.

(5) A broker shall ensure all radioactive waste contained within a shipment accepted for disposal at a land disposal

facility in the state is traceable to the original generators and states, regardless of whether the waste is shipped directly from the point of generation to the disposal facility, or shipped through a broker.

R313-26-5. Land Disposal Facility Licensee Requirements.

The land disposal facility licensee shall ensure that generators and brokers have a current, unencumbered Generator Site Access Permit prior to accepting a generator's or broker's waste.

R313-26-6. Enforcement.

Generator Site Access Permittees shall be subject to the provisions of Rule R313-14 for violations of federal regulations, state rules or requirements in the current land disposal facility operating license regarding radioactive waste packaging, transportation, labeling, notification, classification, marking, manifesting or description.

KEY: radioactive waste generator permit
September 14, 2001 19-3-106.4

R313. Environmental Quality, Radiation Control.
R313-32. Medical Use of Radioactive Material.
R313-32-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements and provisions for the medical use of radioactive material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the protection of the public health and safety. The requirements and provisions of R313-32 are in addition to, and not in substitution for, other sections of R313.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3) and 19-3-104(6).

R313-32-2. Definitions.

"Authorized nuclear pharmacist" means a pharmacist who is:

(a) board certified as a nuclear pharmacist by the Board of Pharmaceutical Specialties;

(b) identified as an authorized nuclear pharmacist on a Nuclear Regulatory Commission or Agreement State license that authorizes the use of radioactive material in the practice of nuclear pharmacy; or

(c) identified as an authorized nuclear pharmacist on a permit issued by a Nuclear Regulatory Commission or Agreement State specific licensee of broad scope that is authorized to permit the use of radioactive material in the practice of nuclear pharmacy.

"Authorized user" means a physician, dentist, or podiatrist who is:

(a) board certified by at least one of the boards listed in Paragraph (1) of R313-32-910, R313-32-920, R313-32-930, R313-32-940, R313-32-950, or R313-32-960;

(b) identified as an authorized user on a Nuclear Regulatory Commission or Agreement State license that authorizes the medical use of radioactive material; or

(c) identified as an authorized user on a permit issued by a Nuclear Regulatory Commission or Agreement State specific licensee of broad scope that is authorized to permit the medical use of radioactive material.

"Brachytherapy source" means an individual sealed source or a manufacturer-assembled source train that is not designed to be disassembled by the user.

"Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years.

"Dental use" means the intentional external administration of the radiation from radioactive material to human beings in the practice of dentistry in accordance with a license issued by this state.

"Dentist" means an individual licensed by this state to practice dentistry.

"Diagnostic clinical procedures manual" means a collection of written procedures that describes each method, other instructions, and precautions, by which the licensee performs diagnostic clinical procedures; where each diagnostic clinical procedure has been approved by the authorized user and includes the radiopharmaceutical, dosage, and route of administration.

"Management" means the chief executive officer or that person's delegate.

"Medical institution" means an organization in which several medical disciplines are practiced.

"Medical use" means the intentional internal or external administration of radioactive material, or the radiation therefrom, to patients or human research subjects under the supervision of an authorized user.

"Ministerial change" means a change that is made, after ascertaining the applicable requirements, by persons in authority in conformance with the requirements and without making a discretionary judgement about whether those requirements should apply in the case at hand.

"Misadministration" means the administration of:

(a) A radiopharmaceutical dosage greater than 1.11 MBq (30 uCi) of either sodium iodide I-125 or I-131:

(i) involving the wrong individual, or wrong radiopharmaceutical; or

(ii) when both the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administrated dosage and prescribed dosage exceeds 1.11 MBq (30 uCi).

(b) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131:

(i) involving the wrong individual, wrong radiopharmaceutical, or wrong route of administration; or

(ii) when the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage.

(c) A gamma stereotactic radiosurgery radiation dose:

(i) involving the wrong individual or wrong treatment site; or

(ii) when the calculated total administered dose differs from the total prescribed dose by more than ten percent of the total prescribed dose.

(d) A teletherapy radiation dose:

(i) involving the wrong individual, wrong mode of treatment, or wrong treatment site;

(ii) when the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than ten percent of the total prescribed dose;

(iii) when the calculated weekly administered dose exceeds the weekly prescribed dose by 30 percent or more of the weekly prescribed dose; or

(iv) when the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose.

(e) A brachytherapy radiation dose:

(i) involving the wrong individual, wrong radionuclide, or wrong treatment site (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site);

(ii) involving a sealed source that is leaking;

(iii) when, for a temporary implant, one or more sealed sources are not removed upon completion of the procedure; or

(iv) when the calculated administered dose differs from the prescribed dose by more than 20 percent of the prescribed dose.

(f) A diagnostic radiopharmaceutical dosage, other than quantities greater than 1.11 MBq (30 uCi) of either sodium

iodide I-125 or I-131, or both:

(i) involving the wrong individual, wrong radiopharmaceutical, wrong route of administration, or when the administered dosage differs from the prescribed dosage; and

(ii) when the dose to the individual exceeds 0.05 Sv (five rems) effective dose equivalent or 0.5 Sv (50 rems) dose equivalent to any individual organ.

"Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

"Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

"Pharmacist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice pharmacy.

"Podiatric use" means the intentional external administration of the radiation from radioactive material to human beings in the practice of podiatry in accordance with a license issued by this State.

"Podiatrist" means an individual licensed by this State to practice podiatry.

"Prescribed dosage" means the quantity of radiopharmaceutical activity as documented:

(a) in a written directive; or

(b) either in the diagnostic clinical procedures manual or in an appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

"Prescribed dose" means:

(a) for gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(b) for teletherapy, the total dose and dose per fraction as documented in the written directive; or

(c) for brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive.

"Radiation Safety Officer" means the individual identified as the Radiation Safety Officer on a license issued by the Executive Secretary.

"Recordable event" means the administration of:

(a) a radiopharmaceutical or radiation without a written directive where a written directive is required;

(b) a radiopharmaceutical or radiation where a written directive is required without daily recording of each administered radiopharmaceutical dosage or radiation dose in the appropriate record;

(c) a radiopharmaceutical dosage greater than 1.11 MBq (30 uCi) of either sodium iodide I-125 or I-131 when both:

(i) the administered dosage differs from the prescribed dosage by more than ten percent of the prescribed dosage, and

(ii) the difference between the administered dosage and prescribed dosage exceed 555 kBq (15 uCi);

(d) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131, when the administered dosage differs from the prescribed dosage by more than ten percent of the prescribed dosage;

(e) A teletherapy radiation dose when the calculated weekly administered dose exceeds the weekly prescribed dose by 15 percent or more of the weekly prescribed dose; or

(f) A brachytherapy radiation dose when the calculated administered dose differs from the prescribed dose by more than ten percent of the prescribed dose.

"Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

"Teletherapy physicist" means the individual identified as the teletherapy physicist on a license issued by the Executive Secretary.

"Visiting authorized user" means an authorized user who is not identified as an authorized user on the license of the licensee being visited.

"Written directive" means an order in writing for a specific patient or human research subject, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph (f) of this definition, containing the following information:

(a) for any administration of quantities greater than 1.11 MBq (30 uCi) of either sodium iodide I-125 or I-131: the dosage;

(b) for a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration;

(c) for gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

(d) for teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period;

(e) for high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or

(f) for all other brachytherapy:

(i) prior to implantation: the radionuclide, number of sources, and source strengths; and

(ii) after implantation but prior to completion of the procedure: the radionuclide, treatment site, and total source strength and exposure time, or equivalently, the total dose.

R313-32-6. Provisions for Research Involving Human Subjects.

A licensee may conduct research involving human subjects using radioactive material provided that the research is conducted, funded, supported, or regulated by a Federal Agency which has implemented the Federal Policy for the Protection of Human Subjects. Otherwise, a licensee shall apply for and receive approval of a specific amendment to its Utah license before conducting such research. Both types of licensees shall, at a minimum, obtain informed consent from the human subjects and obtain prior review and approval of the research activities by an "Institutional Review Board" in accordance with the meaning of these terms as defined and described in the Federal Policy for the Protection of Human Subjects.

R313-32-7. FDA, other Federal, and State Requirements.

Nothing in R313-32 relieves the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs or devices.

R313-32-11. License Required.

(1) A person shall not manufacture, produce, acquire, receive, possess, use, or transfer radioactive material for medical use except in accordance with a specific license issued by the

Executive Secretary, the Nuclear Regulatory Commission, or an Agreement State, or as allowed in R313-32-11(2) or (3).

(2) An individual shall receive, possess, use, or transfer radioactive material in accordance with the Utah Radiation Control Rules under the supervision of an authorized user as provided in R313-32-25, unless prohibited by license condition.

(3) An individual may prepare unsealed radioactive material for medical use in accordance with R313-32 under the supervision of an authorized nuclear pharmacist or authorized user as provided in R313-32-25, unless prohibited by license condition.

R313-32-12. Application for License, Amendment, or Renewal.

(1) If the application is for medical use sited in a medical institution, only the institution's management may apply. If the application is for medical use not sited in a medical institution, any person may apply.

(2) An application for a license for medical use of radioactive material as described in R313-32-100, R313-32-200, R313-32-300, R313-32-400, and R313-32-500 must be made by filing of Form DRC-02, "Application for Materials License." For guidance in completing the form, refer to the instructions in the most current versions of the appropriate Regulatory Guides. A request for a license amendment or renewal may be submitted in a letter format.

(3) An applicant that satisfies the requirements specified in R313-22-50(2) may apply for a Type A specific license of broad scope.

R313-32-13. License Amendment.

A licensee shall apply for and receive a license amendment:

(1) before it receives or uses radioactive material for a clinical procedure permitted under R313-32 but not permitted by the license issued pursuant to R313-32;

(2) before it permits anyone to work as an authorized user or authorized nuclear pharmacist under the license, except an individual who is:

(a) an authorized user certified by the organizations specified in paragraph (1) of R313-32-910, R313-32-920, R313-32-930, R313-32-940, R313-32-950, or R313-32-960;

(b) an authorized nuclear pharmacist certified by the organization specified in paragraph (1) of R313-32-980;

(c) identified as an authorized user or an authorized nuclear pharmacist on a Nuclear Regulatory Commission or an Agreement State license that authorizes the use of radioactive material in medical use or in the practice of nuclear pharmacy, respectively, or

(d) identified as an authorized user or an authorized nuclear pharmacist on a permit issued by the Executive Secretary, the Nuclear Regulatory Commission or an Agreement State specific licensee of broad scope that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy, respectively.

(3) before it changes Radiation Safety Officers or Teletherapy Physicists;

(4) before it orders radioactive material in excess of the amount, or radionuclide or form different than authorized on the license; and

(5) before it adds to or changes the address or addresses of use identified on the license.

R313-32-14. Notifications.

(1) A licensee shall provide to the Executive Secretary a copy of the board certification, the Nuclear Regulatory Commission or Agreement State license, or the permit issued by a licensee of broad scope for each individual no later than 30 days after the date that the licensee permits the individual to work as an authorized user or an authorized nuclear pharmacist pursuant to R313-32-13(2)(a) through (2)(d).

(2) A licensee shall notify the Executive Secretary by letter no later than 30 days after:

(a) an authorized user, an authorized nuclear pharmacist, Radiation Safety Officer, or teletherapy physicist permanently discontinues performance of duties under the license or has a name change; or

(b) the licensee's mailing address changes.

(3) The licensee shall mail the documents required in R313-32-14 to the address identified in R313-12-110.

R313-32-15. Exemptions Regarding Type A Specific Licenses of Broad Scope.

A licensee possessing a Type A specific license of broad scope for medical use is exempt from the following:

(1) The provisions of R313-32-13(2);

(2) The provisions of R313-32-13(5) regarding additions to or changes in the areas of use only at the addresses specified in the license;

(3) The provisions of R313-32-14(1); and

(4) The provisions of R313-32-14(2)(a) for an authorized user or an authorized nuclear pharmacist.

R313-32-18. License Issuance.

The Executive Secretary shall issue a license for the medical use of radioactive material for a term of five years provided the following requirements are met:

(1) The applicant has filed form DRC-02 "Application for Materials License - Medical" in accordance with the instructions in R313-22-32.

(2) The applicant has paid any applicable fee as provided in R313-70.

(3) The Executive Secretary finds the applicant equipped and committed to observe the safety standards established in R313-15 for the protection of the public health and safety.

(4) In addition to the requirements set forth in R313-22-33 a specific license for human use of radioactive material in institutions will be issued if:

(a) the applicant has appointed a radiation safety committee to coordinate the use of radioactive material throughout that institution and to maintain surveillance over the institution's radiation safety program; and

(b) if the application is for a license to use unspecified quantities or multiple types of radioactive material, the applicant's staff has training and experience in the use of a variety or radioactive materials for a variety of human uses, and meets the training and experience requirements of R313-32.

(5) A specific license for the human use of radioactive material will be issued to an individual physician if the

following are complied with:

(a) The applicant has access to a hospital possessing adequate facilities to hospitalize and monitor the applicant's radioactive patients whenever it is advisable.

(b) The applicant has training and experience as required by R313-32, in the handling and administration of radioactive material and, where applicable, the clinical management of radioactive patients.

(c) The application is for use in the applicant's practice in an office outside a medical institution.

(d) The Executive Secretary shall not approve an application by an individual physician or group of physicians for a specific license to receive, possess or use radioactive material on the premises of a medical institution unless:

(i) the use of radioactive material is limited to:

(A) the administration of radiopharmaceuticals for diagnostic or therapeutic purposes;

(B) the performance of diagnostic studies on patients to whom a radiopharmaceutical has been administered;

(C) the performance of in vitro diagnostic studies;

(D) the calibration and quality control checks of radioactive assay instrumentation, radiation safety instrumentation and diagnostic instrumentation;

(ii) the physician brings the radioactive material with him and removes the radioactive material when he departs. The institution cannot receive, possess or store radioactive material other than the amount of material remaining in the patient; or

(iii) the medical institution does not hold a radioactive material license issued pursuant to the provisions of R313-32-18(4).

R313-32-19. Specific Exemptions.

The Board may, upon application of any interested person or upon its own initiative, grant exemptions from the rules in R313-32 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. The Board will review requests for exemptions from training and experience requirements with the assistance of the Executive Secretary.

R313-32-20. ALARA Program.

(1) The licensee shall develop and implement a written radiation protection program that includes provisions for keeping doses ALARA.

(2) To satisfy the requirement of R313-32-20(1) one of the following shall be implemented:

(a) At a medical institution, management, the Radiation Safety Officer, and authorized users shall participate in the program as requested by the Radiation Safety Committee.

(b) For licensees that are not medical institutions, management and authorized users shall participate in the program as requested by the Radiation Safety Officer.

(3) The program shall include notice to workers of the program's existence and workers' responsibility to help keep dose equivalents ALARA, a review of summaries of the types and amounts of radioactive material used, occupational doses, changes in radiation safety procedures and safety measures, and continuing education and training for personnel who work with or in the vicinity of radioactive material. The purpose of the review is to ensure that licensees make a reasonable effort to maintain individual and collective occupational doses ALARA.

R313-32-21. Radiation Safety Officer.

(1) A licensee shall appoint a Radiation Safety Officer responsible for implementing the radiation safety program. The licensee, through the Radiation Safety Officer, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's radioactive material program.

(2) The Radiation Safety Officer shall:

(a) investigate overexposures, accidents, spills, losses, thefts, unauthorized receipts, uses, transfers, disposals, misadministrations, and other deviations from approved radiation safety practices and implement corrective actions as necessary;

(b) establish, collect in one binder or file, and implement written policy and procedures for:

(i) authorizing the purchase of radioactive material;

(ii) receiving and opening packages of radioactive material;

(iii) storing radioactive material;

(iv) keeping an inventory record of radioactive material;

(v) using radioactive material safely;

(vi) taking emergency action if control of radioactive material is lost;

(vii) performing periodic radiation surveys;

(viii) performing checks of survey instruments and other safety equipment;

(ix) disposing of radioactive material;

(x) training personnel who work in or frequent areas where radioactive material is used or stored;

(xi) keeping a copy of all records and reports required by the Utah Radiation Control Rules, a copy of these rules, a copy of each licensing request, license and amendment, and written policy and procedures required by the rules;

(c) brief management once a year on the radioactive material program;

(d) establish personnel exposure investigational levels that, when exceeded, will initiate an investigation by the Radiation Safety Officer of the cause of the exposure;

(e) establish personnel exposure investigational levels that, when exceeded, will initiate a prompt investigation by the Radiation Safety Officer of the cause of the exposure and a consideration of actions that might be taken to reduce the probability of recurrence;

(f) for medical use not at a medical institution, approve or disapprove radiation safety program changes with the advice and consent of management; and

(g) for medical use at a medical institution, assist the Radiation Safety Committee in the performance of its duties.

R313-32-22. Radiation Safety Committee.

The medical institution licensee shall establish a Radiation Safety Committee to oversee the use of radioactive material.

(1) The Committee shall meet the following administrative requirements:

(a) Membership shall consist of at least three individuals and shall include an authorized user of each type of use

permitted by the license, the Radiation Safety Officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a Radiation Safety Officer. Other members may be included as the licensee deems appropriate.

(b) The Committee shall meet at least quarterly.

(c) To establish a quorum and to conduct business, at least one-half of the Committee's membership shall be present, including the Radiation Safety Officer and the management's representative.

(d) The minutes of each Radiation Safety Committee meeting shall include:

(i) the date of the meeting;

(ii) members present;

(iii) members absent;

(iv) summary of deliberations and discussions;

(v) recommended actions and the numerical results of all ballots; and

(vi) ALARA program reviews described in R313-32-20.

(e) The Committee shall promptly provide the members with copies of the meeting minutes, and retain one copy for the duration of the license.

(2) To oversee the use of licensed material, the Committee shall:

(a) review recommendations on ways to maintain individual and collective doses ALARA;

(b)(i) review, on the basis of safety and with regard to the training and experience standards in R313-32-900 through R313-32-981, and approve or disapprove any individual who is to be listed as an authorized user, an authorized nuclear pharmacist, the Radiation Safety Officer, or a Teletherapy Physicist before submitting a license application or request for amendment or renewal; or

(ii) review, pursuant to R313-32-13(2)(a) through (2)(d), on the basis of the board certification, the license, or the permit identifying an individual, and approve or disapprove any individual prior to allowing that individual to work as an authorized user or authorized nuclear pharmacist;

(c) review on the basis of safety, and approve with the advice and consent of the Radiation Safety Officer and the management representative, or disapprove minor changes in radiation safety procedures that are not potentially important to safety and are permitted under R313-32-31;

(d) review quarterly, with the assistance of the Radiation Safety Officer, a summary of the occupational radiation dose records of personnel working with radioactive material;

(e) review quarterly, with the assistance of the Radiation Safety Officer, incidents involving radioactive material with respect to cause and subsequent actions taken; and

(f) review annually, with the assistance of the Radiation Safety Officer, the radiation safety program.

R313-32-23. Statements of Authority and Responsibilities.

(1) A licensee shall provide the Radiation Safety Officer, and at a medical institution the Radiation Safety Committee, sufficient authority, organizational freedom, and management prerogative, to:

(a) identify radiation safety problems;

(b) initiate, recommend, or provide corrective actions; and

(c) verify implementation of corrective actions.

(2) A licensee shall establish and state in writing the authorities, duties, responsibilities, and radiation safety activities of the Radiation Safety Officer, and at a medical institution the Radiation Safety Committee, and retain the current edition of these statements as a record until the Executive Secretary terminates the license.

R313-32-25. Supervision.

(1) A licensee that permits the receipt, possession, use or transfer of radioactive material by an individual under the supervision of an authorized user as allowed by R313-32-11(2) shall:

(a) instruct the supervised individual in the principles of radiation safety appropriate to that individual's use of radioactive material and in the licensee's written quality management program;

(b) require the supervised individual to follow the instructions of the supervising authorized user, follow the written radiation safety and quality management procedures established by the licensee, and comply with the Utah Radiation Control Rules and the license conditions with respect to the use of radioactive material; and

(c) periodically review the supervised individual's use of radioactive material and the records kept to reflect this use.

(2) A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by R313-32-11(3), shall:

(a) instruct the supervised individual in the preparation of radioactive material for medical use and the principles of and procedures for radiation safety and in the licensee's written quality management program, as appropriate to that individual's use of radioactive material;

(b) require the supervised individual to follow the instructions given pursuant to R313-32-25(2)(a) and to comply with these rules and license conditions; and

(c) require the supervising authorized nuclear pharmacist or physician who is an authorized user to periodically review the work of the supervised individual as it pertains to preparing radioactive material for medical use and the records kept to reflect that work.

(3) A licensee that supervises an individual is responsible for the acts and omissions of the supervised individual.

R313-32-29. Administrative Requirements that Apply to the Providers of Mobile Nuclear Medicine Service.

(1) The Executive Secretary will license mobile nuclear medicine service only in accordance with R313-32-100, R313-32-200, and R313-32-500.

(2) Mobile nuclear medicine service licensees shall obtain a letter signed by the management of each client for which services are rendered that authorizes use of radioactive material at the client's address of use. The mobile nuclear medicine service licensee shall retain the letter for three years after the last provision of service.

(3) If a mobile nuclear medicine service provides services that the client is also authorized to provide, the client is responsible for assuring that services are conducted in

accordance with the rules while the mobile nuclear medicine service is under the client's direction.

(4) A mobile nuclear medicine service shall not order radioactive material to be delivered directly from the manufacturer or distributor to the client's address of use.

R313-32-31. Radiation Safety Program Changes.

(1) A licensee may make minor changes in radiation safety procedures that are not potentially important to safety, i.e., ministerial changes, that were described in the application for license, renewal, or amendment except for those changes in R313-32-13 and R313-32-606. A licensee is responsible for assuring that any change made is in compliance with the requirements of the rules and the license.

(2) A licensee shall retain a record of each change until the license has been renewed or terminated. The record shall include the effective date of the change, a copy of the old and new radiation safety procedures, the reason for the change, a summary of radiation safety matters that were considered before making the change, the signature of the Radiation Safety Officer, and the signatures of the affected authorized users and of management or, in a medical institution, the Radiation Safety Committee's chairman and the management representative.

R313-32-32. Quality Management Program.

(1) The applicant or licensee shall establish and maintain a written quality management program to provide high confidence that radioactive material or radiation from radioactive material will be administered as directed by the authorized user. The quality management program shall include written policies and procedures to meet the following specific objectives:

(a) that, prior to administration, a written directive is prepared for:

(i) teletherapy radiation doses;

(ii) gamma stereotactic radiosurgery radiation doses;

(iii) brachytherapy radiation doses;

(iv) administration of quantities greater than 1.11 MBq (30 uCi) of either sodium iodide I-125 or I-131;

(v) therapeutic administration of a radiopharmaceutical, other than sodium iodide I-125 or I-131;

(b) that the following are exceptions to the written directive:

(i) if, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive will be acceptable, provided that the oral revision is documented immediately in the patient's record and a revised written directive is signed by the authorized user within 48 hours of the oral revision;

(ii) also, a written revision to an existing written directive may be made for a diagnostic or therapeutic procedure provided that the revision is dated and signed by an authorized user prior to the administration of the radiopharmaceutical dosage, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next teletherapy fractional dose; or

(iii) if, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive will be acceptable, provided that the information contained in the oral directive is documented immediately in the patient's record and a written directive is prepared within 24 hours of the oral directive;

(c) that, prior to each administration, the patient's or human research subject's identity is verified by more than one method as the individual named in the written directive;

(d) that final plans of treatment and related calculations for brachytherapy, teletherapy, and gamma stereotactic radiosurgery are in accordance with the respective written directives;

(e) that each administration is in accordance with the written directive; and

(f) that each unintended deviation from the written directive is identified and evaluated, and appropriate action is taken.

(2) The licensee shall:

(a) develop procedures for and conduct a review of the quality management program including, since the last review, an evaluation of:

(i) a representative sample of patient and human research subject administrations,

(ii) all recordable events, and

(iii) all misadministrations to verify compliance with each aspect of the quality management program; these reviews shall be conducted at intervals no greater than 12 months;

(b) evaluate these reviews to determine the effectiveness of the quality management program and, if required, make modifications to meet the objectives of R313-32-32(1); and

(c) retain records of the review, including the evaluations and findings of the review, in an auditable form for three years.

(3) The licensee shall evaluate and respond, within 30 days after discovery of the recordable event, to each recordable event by:

(a) assembling the relevant facts including the cause;

(b) identifying what, if applicable, corrective action is required to prevent recurrence; and

(c) retaining a record, in an auditable form, for three years, of the relevant facts and what corrective action, if applicable, was taken.

(4) The licensee shall retain:

(a) a written directive; and

(b) a record of each administered radiation dose or radiopharmaceutical dosage where a written directive is required in R313-32-32(1)(a), in an auditable form, for three years after the date of administration.

(5) The licensee may make modifications to the quality management program to increase the program's efficiency provided the program's effectiveness is not decreased. The licensee shall furnish the modification to the Executive Secretary within 30 days after the modification has been made.

(6)(a) Applicants for a new license, as applicable, shall submit to the Executive Secretary in accordance with R313-12-110 a quality management program as part of the application for a license and implement the program upon issuance of the license by the Executive Secretary.

(b) Existing licensees, as applicable, shall submit to the Executive Secretary in accordance with R313-12-110, prior to March 1, 1995, a written certification that the quality management program has been implemented along with a copy

of the program.

R313-32-33. Notifications, Reports and Records of Misadministrations.

(1) For a misadministration:

(a) the licensee shall notify the Executive Secretary by telephone no later than the next calendar day after discovery of the misadministration.

(b) the licensee shall submit a written report to the Executive Secretary within 15 days after discovery of the misadministration. The written report shall include the licensee's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the individual who received the misadministration; what improvements are needed to prevent recurrence; actions taken to prevent recurrence; whether the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not; and if there was notification, what information was provided. The report must not include the individual's name or any other information that could lead to identification of the individual. To meet the requirements of R313-32-33, the notification of the individual receiving the misadministration may be made instead to that individual's responsible relative or guardian, when appropriate.

(c) the licensee shall notify the referring physician and also notify the individual receiving the misadministration of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee is not required to notify the individual without first consulting the referring physician. If the referring physician or the individual receiving the misadministration cannot be reached within 24 hours, the licensee shall notify the individual as soon as possible thereafter. The licensee may not delay any appropriate medical care for the individual, including any necessary remedial care as a result of the misadministration, because of any delay in notification.

(d) if the individual was notified, the licensee shall also furnish, within 15 days after discovery of the misadministration, a written report to the individual by sending either:

(i) a copy of the report that was submitted to the Executive Secretary; or

(ii) a brief description of both the event and the consequences as they may affect the individual, provided a statement is included that the report submitted to the Executive Secretary can be obtained from the licensee.

(2) The licensee shall retain a record of each misadministration for five years. The record shall contain the names of all individuals involved (including the prescribing physician, allied health personnel, the individual who received the misadministration, and that individual's referring physician, if applicable), the individual's social security number or other identification number if one has been assigned, a brief description of the misadministration, why it occurred, the effect on the individual, improvements needed to prevent recurrence, and the actions taken to prevent recurrence.

(3) Aside from the notification requirement, nothing in R313-32-33 affects any rights or duties of licensees and physicians in relation to each other, to individuals receiving misadministrations, or to that individual's responsible relative or guardian.

R313-32-49. Suppliers for Sealed Sources or Devices for Medical Use.

A licensee may use for medical use only:

(1) Sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued pursuant to the rules in R313-22 and R313-22-75(10) or the equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; or

(2) Teletherapy sources manufactured and distributed in accordance with a license issued pursuant to R313-22 or the equivalent requirements of the Nuclear Regulatory Commission or an Agreement State.

R313-32-50. Possession, Use, Calibration, and Check of Dose Calibrators.

(1) A licensee shall possess and use a dose calibrator to measure the activity of dosages of photon-emitting radionuclides prior to administration to each patient or human research subject.

(2) A licensee shall:

(a) check each dose calibrator for constancy with a dedicated check source at the beginning of each day of use. To satisfy this requirement, the check shall be done on a frequently used setting with a sealed source of not less than 370 kBq (ten uCi) of radium-226 or 1.85 MBq (50 uCi) for a photon-emitting radionuclide;

(b) test each dose calibrator for accuracy upon installation and at least annually thereafter by assaying at least two sealed sources containing different radionuclides whose activity the manufacturer has determined within five percent of its stated activity, whose activity is at least 370 kBq (ten uCi) for radium-226 and 1.85 MBq (50 uCi) for a photon-emitting radionuclide, and at least one of which has a principal photon energy between 100 keV and 500 keV;

(c) test each dose calibrator for linearity upon installation and at least quarterly thereafter over a range from the highest dosage that will be administered to a patient or human research subject to 1.1 MBq (30 uCi); and

(d) test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used. The licensee shall keep a record of this test for the duration of the use of the dose calibrator.

(3) A licensee shall also perform appropriate checks and tests required by R313-32-50 following adjustment or repair of the dose calibrator.

(4) A licensee shall mathematically correct dosage readings for geometry or linearity errors that exceed ten percent if the dosage is greater than 370 kBq (ten uCi) and shall repair or replace the dose calibrator if the accuracy or constancy error exceeds ten percent.

(5) A licensee shall retain a record of each check and test required by R313-32-50 for three years unless directed otherwise. The records required in R313-32-50(2)(a) through (2)(d) shall include:

(a) for R313-32-50(2)(a), the model and serial number of the dose calibrator, the identity of the radionuclide contained in the check source, the date of the check, the activity measured, and the initials of the individual who performed the check;

(b) for R313-32-50(2)(b), the model and serial number of the dose calibrator, the model and serial number of each source used, the identity of the radionuclide contained in the source and its activity, the date of the test, the results of the test, and the identity of the individual performing the test;

(c) for R313-32-50(2)(c), the model and serial number of the dose calibrator, the calculated activities, the measured activities, the date of the test, and the identity of the individual performing the test; and

(d) for R313-32-50(2)(d), the model and serial number of the dose calibrator, the configuration of the source measured, the activity measured for each volume measured, the date of the test, and the identity of the individual performing the test.

R313-32-51. Calibration and Check of Survey Instruments.

(1) A licensee shall calibrate the survey instruments used to show compliance with R313-32 before first use, annually, and following repair. The licensee shall:

(a) calibrate all scales with readings up to ten mSv (1000 mrem) per hour with a radiation source;

(b) calibrate two separated readings on each scale that shall be calibrated. The readings shall be separated by 50 percent of the scale reading; and

(c) conspicuously note on the instrument the apparent exposure rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(2) When calibrating a survey instrument, the licensee shall consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by not more than 20 percent, and shall conspicuously attach a correction chart or graph to the instrument.

(3) A licensee shall check each survey instrument for proper operation with the dedicated check source each day of use. A licensee is not required to keep records of these checks.

(4) A licensee shall retain a record of each survey instrument calibration for three years. The record shall include:

(a) a description of the calibration procedure; and

(b) the date of the calibration, a description of the source used and the certified exposure rates from the source, and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, and the signature of the individual who performed the calibration.

R313-32-52. Possession, Use, Calibration, and Check of Instruments to Measure Dosages or Alpha- or Beta-emitting Radionuclides.

(1) R313-32-52 does not apply to unit dosages of alpha- or beta-emitting radionuclides that are obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State.

(2) For other than unit dosages obtained pursuant to R313-32-52(1), a licensee shall possess and use instrumentation to measure the radioactivity of alpha- or beta-emitting radionuclides. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha- or beta-emitting radionuclides prior to administration to each patient or human research subject. In addition, the licensee shall:

(a) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(b) check each instrument for constancy and proper operation at the beginning of each day of use.

R313-32-53. Measurement of Dosages of Unsealed Radioactive Material for Medical Use.

A licensee shall:

(1) measure the activity of each dosage of a photon-emitting radionuclide prior to medical use;

(2) measure, by direct measurement or by combination of measurements and calculations, the activity of each dosage of an alpha- or beta-emitting radionuclide prior to medical use, except for unit dosages obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; and

(3) retain a record of the measurements required by R313-32-53 for three years. To satisfy this requirement, the record shall contain the following:

(a) generic name, trade name, or abbreviation of the radiopharmaceutical, its lot number, and expiration dates and the radionuclide;

(b) patient's or human research subject's name, and identification number if one has been assigned;

(c) prescribed dosage and activity of the dosage at the time of measurement, or a notation that the total activity is less than 1.1 MBq (30 uCi);

(d) date and time of the measurement; and

(e) initials of the individual who made the record.

R313-32-57. Authorization for Calibration and Reference Sources.

Persons authorized by R313-32-11 for medical use of radioactive material may receive, possess, and use the following radioactive material for check, calibration, and reference use:

(1) sealed sources manufactured and distributed by a person licensed pursuant to R313-22-75(10) or equivalent Nuclear Regulatory Commission or Agreement State regulations and that do not exceed 555 MBq (15 mCi) each;

(2) radioactive material listed in R313-32-100 or R313-32-200 with a half-life not longer than 100 days in individual amounts not to exceed 555 MBq (15 mCi);

(3) radioactive material listed in R313-32-100 or R313-32-200 with a half-life longer than 100 days in individual amounts not to exceed 7.4 MBq (200 uCi); and

(4) technetium-99m in individual amounts not to exceed 1.85 GBq (50 mCi).

R313-32-59. Requirements for Possession of Sealed Sources and Brachytherapy Sources.

(1) A licensee in possession of sealed sources or brachytherapy sources shall follow the radiation safety and handling instructions supplied by the manufacturer, and shall maintain the instructions for the duration of source use in a legible form convenient to users.

(2) A licensee in possession of a sealed source shall:

(a) test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six months before transfer to the licensee; and

(b) test the source for leakage at intervals not to exceed six months or at other intervals approved by the Executive Secretary, the Nuclear Regulatory Commission or an Agreement State and described in the label or brochure that accompanies the source.

(3) To satisfy the leak test requirements of R313-32-59, the licensee must:

(a) take a wipe sample from the sealed source or from the surfaces of the device in which the sealed source is mounted or stored on which radioactive contamination might be expected to accumulate or wash the source in a small volume of detergent solution and treat the entire volume as the sample;

(b) take teletherapy and other device source test samples when the source is in the "off" position; and

(c) measure the sample so that the leakage test can detect the presence of 185 Bq (0.005 uCi) of radioactive material on the sample.

(4) A licensee shall retain leakage test records for five years. The records shall contain the model number, the serial number if assigned, of each source tested, the identity of each source radionuclide and its estimated activity, the measured activity of each test sample expressed in becquerels or microcuries, a description of the method used to measure each test sample, the date of the test, and the signature of the Radiation Safety Officer.

(5) If the leakage test reveals the presence of 185 Bq (0.005 uCi) or more of removable contamination, the licensee shall:

(a) immediately withdraw the sealed source from use and store it in accordance with the requirements in R313-15; and

(b) file a report within five days of the leakage test with the Executive Secretary describing the equipment involved, the test results, and the action taken.

(6) A licensee need not perform a leakage test on the following sources:

(a) sources containing only radioactive material with a half-life of less than 30 days;

(b) sources containing only radioactive material as a gas;

(c) sources containing 3.7 MBq (100 uCi) or less of beta or gamma-emitting material or 370 kBq (ten uCi) or less of alpha-emitting material;

(d) sources stored and not being used. The licensee shall, however, test each source for leakage before use or transfer unless it has been leakage-tested within six months before the date of use or transfer; and

(e) seeds of iridium-192 encased in nylon ribbon.

(7) A licensee in possession of a sealed source or brachytherapy source shall conduct a quarterly physical inventory of all sources in its possession. The licensee shall retain inventory records for five years. The inventory records shall contain the model number of each source, and serial number if one has been assigned, the identity of each source radionuclide and its nominal activity, the location of each source, and the signature of the Radiation Safety Officer.

(8) A licensee in possession of a sealed source or brachytherapy source shall measure the ambient dose rates quarterly in all areas where sources are stored. This does not apply to teletherapy sources in teletherapy units or sealed sources in diagnostic devices.

(9) A licensee shall retain a record of each survey required in R313-32-59(8) for three years. The record shall include the date of the survey, a plan of each area that was surveyed, the measured dose rate at several points in each area expressed in microsieverts or millirem per hour, the survey instrument used, and the signature of the Radiation Safety Officer.

R313-32-60. Syringe Shields and Labels.

(1) A licensee shall keep syringes that contain radioactive material to be administered in a radiation shield.

(2) To identify its contents, a licensee shall conspicuously label each syringe or syringe radiation shield that contains a syringe with a radiopharmaceutical. The label shall show the radiopharmaceutical name or its abbreviation, the clinical procedure to be performed, or the patient's or the human research subject's name.

(3) A licensee shall require each individual who prepares a radiopharmaceutical kit to use a syringe radiation shield when preparing the kit and shall require each individual to use a syringe radiation shield when administering a radiopharmaceutical by injection unless the use of the shield is contraindicated for that patient or human research subject.

R313-32-61. Vial Shields and Labels.

(1) A licensee shall require each individual preparing or handling a vial that contains a radiopharmaceutical to keep the vial in a vial radiation shield.

(2) To identify its contents, a licensee shall conspicuously label each vial radiation shield that contains a vial of a radiopharmaceutical. The label shall show the radiopharmaceutical name or its abbreviation.

R313-32-70. Surveys for Contamination and Ambient Radiation Exposure Rate.

(1) A licensee shall survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

(2) A licensee shall survey with a radiation detection survey instrument at least once each week all areas where radiopharmaceuticals or radiopharmaceutical waste is stored.

(3) A licensee shall conduct the surveys required by R313-32-70(1) and (2) so as to be able to detect dose rates as low as one uSv (0.1 mrem) per hour.

(4) A licensee shall establish radiation dose rate trigger levels for the surveys required by R313-32-70(1) and (2). A licensee shall require that the individual performing the survey immediately notify the Radiation Safety Officer if a dose rate exceeds a trigger level.

(5) A licensee shall survey for removable contamination once each week all areas where radiopharmaceuticals are routinely prepared for use, administered, or stored.

(6) A licensee shall conduct the survey required by R313-32-70(5) so as to be able to detect contamination on each wipe sample of 2200 disintegrations per minute, (0.001 uCi or 37 Bq).

(7) A licensee shall establish removable contamination trigger levels for the surveys required by R313-32-70(5). A licensee shall require that the individual performing the survey immediately notify the Radiation Safety Officer if contamination exceeds the trigger level.

(8) A licensee shall retain a record of each survey for three years. The record shall include the date of the survey, a plan of each area surveyed, the trigger level established for each area, the detected dose rate at several points in each area expressed in microsieverts or millirem per hour or the removable contamination in each area expressed in disintegrations per minute (becquerels or curies) per 100 square centimeters, the instrument used to make the survey or analyze the samples, and the initials of the individual who performed the survey.

R313-32-75. Release of Individuals Containing Radiopharmaceuticals or Permanent Implants.

(1) The licensee may authorize the release from its control of any individual who has been administered radiopharmaceuticals or permanent implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed 5 mSv (0.5 rem).

NOTE: The Nuclear Regulatory Commission Regulatory Guide 8.39, "Release of Patients Administered Radioactive Materials," describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding 5 mSv (0.5 rem).

(2) The licensee shall provide the released individual with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed 1 mSv (0.1 rem). If the dose to a breast-feeding infant or child could exceed 1 mSv (0.1 rem) assuming there were no interruption of breast-feeding, the instructions shall also include:

(a) guidance on the interruption or discontinuation of breast-feeding, and

(b) information on the consequences of failure to follow the guidance.

(3) The licensee shall maintain a record of the basis for authorizing the release of an individual, for three years after the date of release, if the total effective dose equivalent is calculated by:

(a) using the retained activity rather than the activity administered,

(b) using an occupancy factor less than 0.25 at 1 meter,

(c) using the biological or effective half-life, or

(d) considering the shielding by tissue.

(4) The licensee shall maintain a record, for three years after the date of release, that instructions were provided to a breast-feeding woman if the radiation dose to the infant or child from continued breast-feeding could result in a total effective dose equivalent exceeding 5 mSv (0.5 rem).

R313-32-80. Technical Requirements that Apply to the Providers of Mobile Nuclear Medicine Service.

A licensee providing mobile nuclear medicine service shall:

(1) transport to each address of use only syringes or vials containing prepared radiopharmaceuticals or radiopharmaceuticals that are intended for reconstitution of radiopharmaceutical kits;

(2) bring into each address of use all radioactive material to be used and, before leaving, remove all unused radioactive material and all associated waste;

(3) secure or keep under constant surveillance and immediate control all radioactive material when in transit or at an address of use;

(4) check survey instruments and dose calibrators as described in R313-32-50 and R313-32-51 and check all other transported equipment for proper function before medical use at each address of use;

(5) carry a radiation detection survey meter in each vehicle that is being used to transport radioactive material, and, before leaving a client address of use, survey all radiopharmaceutical areas of use with a radiation detection survey meter to ensure that all radiopharmaceuticals and all associated waste have been removed; and

(6) retain a record of each survey required in R313-32-80(5) for three years. The record shall include the date of the survey, a plan of each area that was surveyed, the measured dose rate at several points in each area of use expressed in microsieverts or millirems per hour, the instrument used to make the survey, and the initials of the individual who performed the survey.

R313-32-90. Storage of Volatiles and Gases.

A licensee shall store volatile radiopharmaceuticals and radioactive gases in the shipper's radiation shield and container. A licensee shall store a multi-dose container in a fume hood after drawing the first dosage from it.

R313-32-92. Decay-In-Storage.

(1) A licensee may hold radioactive material with a physical half-life of less than 65 days for decay-in-storage before disposal in ordinary trash and is exempt from the requirements of R313-15-1001 if it:

(a) holds radioactive material for decay a minimum of ten half-lives;

(b) monitors radioactive material at the container surface before disposal as ordinary trash and determines that its radioactivity cannot be distinguished from the background radiation level with a radiation detection survey meter set on its most sensitive scale and with no interposed shielding;

(c) removes or obliterates all radiation labels; and

(d) separates and monitors each generator column individually with radiation shielding removed to ensure that it has decayed to background radiation level before disposal.

(2) A licensee shall retain a record of each disposal permitted under R313-32-92(1) for three years. The record

shall include the date of the disposal, the date on which the radioactive material was placed in storage, the radionuclides disposed, the survey instrument used, the background dose rate, the dose rate measured at the surface of each waste container, and the name of the individual who performed the disposal.

R313-32-100. Use of Unsealed Radioactive Material for Uptake, Dilution, and Excretion Studies.

A licensee may use for uptake, dilution, or excretion studies any unsealed radioactive material prepared for medical use that is either:

(1) obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; or

(2) prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in R313-32-920, or an individual under the supervision of either as specified in R313-32-25.

R313-32-120. Possession of Survey Instrument.

A licensee authorized to use radioactive material for uptake, dilution, and excretion studies shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour.

R313-32-200. Use of Unsealed Radioactive Material for Imaging and Localization Studies.

A licensee may use for imaging and localization studies any unsealed radioactive material prepared for medical use that is either:

(1) obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; or

(2) prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in R313-32-920, or an individual under the supervision of either as specified in R313-32-25.

R313-32-204. Permissible Molybdenum-99 Concentration.

(1) A licensee shall not administer to humans a radiopharmaceutical containing more than 5.55 kBq (0.15 uCi) of molybdenum-99 per 37.0 MBq (one mCi) of technetium-99m.

(2) A licensee that uses molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical shall measure the molybdenum-99 concentration in each elute or extract.

(3) A licensee that is required to measure molybdenum concentration shall retain a record of each measurement for three years. The record shall include, for each elution or extraction of technetium-99m, the measured activity of the technetium expressed in megabecquerels or millicuries, the measured activity of the molybdenum expressed in kilobecquerels or microcuries, the ratio of the measures expressed as kilobecquerels or microcuries of molybdenum per megabecquerels or millicuries of technetium, the time and date of the measurement, and the initials of the individual who made the measurement.

R313-32-205. Control of Aerosols and Gases.

(1) A licensee that administers radioactive aerosols or gases shall do so in a room with a system that will keep airborne concentrations within the limits prescribed in R313-15-201(4) and R313-15-301. The system shall either be directly vented to the atmosphere through an air exhaust or provide for collection and decay or disposal of the aerosol or gas in a shielded container.

(2) A licensee shall administer radioactive gases in rooms that are at negative pressure compared to surrounding rooms.

(3) Before receiving, using, or storing a radioactive gas, the licensee shall calculate the amount of time needed after a spill to reduce the concentration in the room to the occupational limit as specified in R313-15-201. The calculation shall be based on the highest activity of gas handled in a single container, the air volume of the room, and the measured available air exhaust rate.

(4) A licensee shall make a record of the calculations required in R313-32-205(3) that includes the assumptions, measurements, and calculations made and shall retain the record for the duration of use of the area. A licensee shall also post the calculated time and safety measures to be instituted in case of a spill at the area of use.

(5) A licensee shall check the operation of reusable collection systems each month, and measure the ventilation rates available in areas of radioactive gas use each six months. Records of the measurement shall be kept for three years.

R313-32-220. Possession of Survey Instruments.

A licensee authorized to use radioactive material for imaging and localization studies shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range of one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour.

R313-32-300. Use of Unsealed Radioactive Material for Therapeutic Administration.

A licensee may use for therapeutic administration any unsealed radioactive material prepared for medical use that is either:

(1) obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; or

(2) prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in R313-32-920, or an individual under the supervision of either as specified in R313-32-25.

R313-32-310. Safety Instruction.

(1) A licensee shall provide radiation safety instruction for all personnel caring for the patient or the human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with R313-32-75. To satisfy this requirement, the instruction shall describe the licensee's procedures for:

(a) patient or human research subject control;

(b) visitor control;

(c) contamination control;

(d) waste control; and

(e) notification of the Radiation Safety Officer in case of the patient's or the human research subjects's death or medical emergency.

(2) A licensee shall keep for three years a list of individuals receiving instruction required by R313-32-310(1), a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

R313-32-315. Safety Precautions.

(1) For each patient or human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with R313-32-75, a licensee shall:

(a) provide a private room with a private sanitary facility;

(b) post the patient's or the human research subject's door with a "Radioactive Materials" sign and note on the door or in the patient's or the human research subject's chart where and how long visitors may stay in the patient's or the human research subject's room;

(c) authorize visits by individuals under age 18 only on a case-by-case basis with the approval of the authorized user after consultation with the Radiation Safety Officer;

(d) promptly after administration of the dosage, measure the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of R313-15, and retain for three years a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in microsieverts or millirem per hour, the instrument used to make the survey, and the initials of the individual who made the survey;

(e) either monitor material and items removed from the patient's or the human research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle them as radioactive waste;

(f) survey the patient's or the human research subject's room and private sanitary facility for removable contamination with a radiation detection survey instrument before assigning another patient or human research subject to the room. The room shall not be reassigned until removable contamination is less than 200 disintegrations per minute per 100 square centimeters; and

(g) measure the thyroid burden of each individual who helped prepare or administer a dosage of iodine-131 within three days after administering the dosage, and retain for the period required by R313-15-1107 a record of each thyroid burden measurement, its date, the name of the individual whose thyroid burden was measured, and the initials of the individual who made the measurements.

(2) A licensee shall notify the Radiation Safety Officer immediately if the patient or the human research subject dies or has a medical emergency.

R313-32-320. Possession of Survey Instruments.

A licensee authorized to use radioactive material for radiopharmaceutical therapy shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour.

R313-32-400. Use of Sources for Brachytherapy.

A licensee shall use the following sources in accordance with the manufacturer's radiation safety and handling instructions:

(1) Cesium-137 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(2) Cobalt-60 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(3) Gold-198 as a sealed source in seeds for interstitial treatment of cancer;

(4) Iridium-192 as seeds encased in nylon ribbon for interstitial and intracavitary treatment of cancer and as seeds for topical treatment of cancer;

(5) Strontium-90 as a sealed source in an applicator for treatment of superficial eye conditions;

(6) Iodine-125 as a sealed source in seeds for topical, interstitial and intracavitary treatment of cancer;

(7) Palladium-103 as a sealed source in seeds for interstitial treatment of cancer.

R313-32-404. Release of Patients or Human Research Subjects Treated With Temporary Implants.

(1) Immediately after removing the last temporary implant source from a patient or a human research subject, the licensee shall make a radiation survey of the patient or the human research subject with a radiation detection survey instrument to confirm that all sources have been removed. The licensee shall not release from confinement for medical care a patient or a human research subject treated by temporary implant until all sources have been removed.

(2) A licensee shall retain a record of patient or human research subject surveys for three years. Each record shall include the date of the survey, the name of the patient or the human research subject, the dose rate from the patient or the human research subject expressed as microsieverts per hour or millirem per hour and measured at one meter from the patient or the human research subject, the survey instrument used, and the initials of the individual who made the survey.

R313-32-406. Brachytherapy Sources Inventory.

(1) Promptly after removing them from a patient or a human research subject, a licensee shall return brachytherapy sources to the storage area, and count the number returned to ensure that all sources taken from the storage area have been returned.

(2) A licensee shall make a record of brachytherapy source use which shall include:

(a) the names of the individuals permitted to handle the sources;

(b) the number and activity of sources removed from storage, the patient's or the human research subject's name and room number, the time and date they were removed from storage, the number and activity of the sources in storage after the removal, and the initials of the individual who removed the sources from storage; and

(c) the number and activity of sources returned to storage, the patient's or the human research subject's name and room number, the time and date they were returned to storage, the number and activity of sources in storage after the return, and the initials of the individual who returned the sources to storage.

(3) Immediately after implanting sources in a patient or a human research subject the licensee shall make a radiation survey of the patient or the human research subject and the area of use to confirm that no sources have been misplaced. The licensee shall make a record of each survey.

(4) A licensee shall retain the records required in R313-32-406(2) and (3) for three years.

R313-32-410. Safety Instruction.

(1) The licensee shall provide radiation safety instruction to all personnel caring for the patient or the human research subject undergoing implant therapy. To satisfy this requirement, the instruction shall describe:

(a) size and appearance of the brachytherapy sources;

(b) safe handling and shielding instructions in case of a dislodged source;

(c) procedures for patient or human research subject control;

(d) procedures for visitor control; and

(e) procedures for notification of the Radiation Safety Officer if the patient or the human research subject dies or has a medical emergency.

(2) A licensee shall retain for three years a record of individuals receiving instruction required by R313-32-410(1), a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

R313-32-415. Safety Precautions.

(1) For each patient or human research subject receiving implant therapy and not released from licensee control pursuant to R313-32-75, a licensee shall:

(a) not quarter the patient or the human research subject in the same room with an individual who is not receiving radiation therapy;

(b) post the patient's or human research subject's door with a "Radioactive Materials" sign and note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room;

(c) authorize visits by individuals under age 18 only on a case-by-case basis with the approval of the authorized user after consultation with the Radiation Safety Officer;

(d) promptly after implanting the material, survey the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of R313-15, and retain for three years a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in microsieverts or millirem per hour, the instrument used to make the survey, and the initials of the individual who made the survey; and

(e) provide the patient or the human research subject with radiation safety guidance that will help to keep radiation dose to household members and the public as low as reasonably achievable before releasing the individual if the individual was administered a permanent implant.

(2) A licensee shall notify the Radiation Safety Officer immediately if the patient or the human research subject dies or has a medical emergency.

R313-32-420. Possession of Survey Instrument.

A licensee authorized to use radioactive material for implant therapy shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour.

R313-32-500. Use of Sealed Sources for Diagnosis.

A licensee shall use the following sealed sources in accordance with the manufacturer's radiation safety and handling instructions:

(1) iodine-125, americium-241, or gadolinium-153 as a sealed source in a device for bone mineral analysis; and

(2) iodine-125 as a sealed source in a portable imaging device.

R313-32-520. Availability of Survey Instrument.

A licensee authorized to use radioactive material as a sealed source for diagnostic purposes shall have available for use a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv per hour to (100 mrem) per hour or a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour. The instrument shall be calibrated in accordance with R313-32-51.

R313-32-600. Use of a Sealed Source in a Teletherapy Unit.

The rules and provisions of R313-32-600 through R313-32-647 govern the use of teletherapy units for medical use that contain a sealed source of cobalt-60 or cesium-137.

R313-32-605. Maintenance and Repair Restrictions.

Only a person specifically licensed by the Executive Secretary, the Nuclear Regulatory Commission, or an Agreement State to perform teletherapy unit maintenance and repair shall:

(1) install, relocate, or remove a teletherapy sealed source or a teletherapy unit that contains a sealed source; or

(2) maintain, adjust, or repair the source drawer, the shutter or other mechanism of a teletherapy unit that could expose the source, reduce the shielding around the source, or result in increased radiation levels.

R313-32-606. License Amendments.

In addition to the changes specified in R313-32-13, a licensee shall apply for and shall receive a license amendment before:

(1) making any change in the treatment room shielding;

(2) making any change in the location of the teletherapy unit within the treatment room;

(3) using the teletherapy unit in a manner that could result in increased radiation levels in areas outside the teletherapy treatment room;

(4) relocating the teletherapy unit; or

(5) allowing an individual not listed on the licensee's license to perform the duties of the teletherapy physicist.

R313-32-610. Safety Instruction.

(1) A licensee shall post instructions at the teletherapy unit console. To satisfy this requirement, these instructions shall inform the operator of:

(a) the procedure to be followed to ensure that only the patient or the human research subject is in the treatment room before turning the primary beam of radiation on to begin a treatment or after a door interlock interruption; and

(b) the procedure to be followed if:

(i) the operator is unable to turn the primary beam of radiation off with controls outside the treatment room or any other abnormal operation occurs; and

(ii) the names and telephone numbers of the authorized users and Radiation Safety Officer to be immediately contacted if the teletherapy unit or console operates abnormally.

(2) A licensee shall provide instruction in the topics identified in R313-32-610(1) to individuals who operate a teletherapy unit.

(3) A licensee shall retain for three years a record of individuals receiving instruction required by R313-32-610(2), a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

R313-32-615. Safety Precautions.

(1) A licensee shall control access to the teletherapy room by a door at each entrance.

(2) A licensee shall equip each entrance to the teletherapy room with an electrical interlock system that will:

(a) prevent the operator from turning the primary beam of radiation on unless each treatment room entrance door is closed;

(b) turn the primary beam of radiation off immediately when an entrance door is opened; and

(c) prevent the primary beam of radiation from being turned on following an interlock interruption until all treatment room entrance doors are closed and the beam on-off control is reset at the console.

(3) A licensee shall equip each entrance to the teletherapy room with a beam condition indicator light.

(4) A licensee shall install in each teletherapy room a permanent radiation monitor capable of continuously monitoring beam status.

(a) A radiation monitor shall provide visible notice of a teletherapy unit malfunction that results in an exposed or partially exposed source, and shall be observable by an individual entering the teletherapy room.

(b) A radiation monitor shall be equipped with a backup power supply separate from the power supply to the teletherapy unit. This backup power supply may be a battery system.

(c) A radiation monitor shall be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients or human research subjects.

(d) A licensee shall maintain a record of the check required by R313-32-615(4)(c) for three years. The record shall include the date of the check, notation that the monitor indicates when its detector is and is not exposed, and the initials of the individual who performed the check.

(e) If a radiation monitor is inoperable, the licensee shall require individuals entering the teletherapy room to use a survey instrument or audible alarm personal dosimeter to monitor for malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in R313-32-615(4)(d).

(f) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

(5) A licensee shall construct or equip each teletherapy room to permit continuous observation of the patient or the human research subject from the teletherapy unit console during irradiation.

R313-32-620. Possession of Survey Instrument.

A licensee authorized to use radioactive material in a teletherapy unit shall have in its possession either a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour or a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour.

R313-32-630. Dosimetry Equipment.

(1) A licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one of the following two conditions shall be met:

(a) The system shall be calibrated by the National Institute of Standards and Technology or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration shall have been performed within the previous two years and after any servicing that may have affected system calibration.

(b) The system shall have been calibrated within the previous four years; eighteen to thirty months after that calibration, the system shall have been intercompared at an intercomparison meeting with another dosimetry system that was calibrated within the past twenty-four months by the National Bureau of Standards or by a calibration laboratory accredited by the AAPM. The intercomparison meeting shall be sanctioned by a calibration laboratory or radiologic physics center accredited by the AAPM. The results of the intercomparison meeting shall have indicated that the calibration factor of the licensee's system had not changed by more than two percent. The licensee shall not use the

intercomparison result to change the calibration factor. When intercomparing dosimetry systems to be used for calibrating cobalt-60 teletherapy units, the licensee shall use a teletherapy unit with a cobalt-60 source. When intercomparing dosimetry systems to be used for calibrating cesium-137 teletherapy units, the licensee shall use a teletherapy unit with a cesium-137 source.

(2) The licensee shall have available for use a dosimetry system for spot-check measurements. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with R313-32-630(1). This comparison shall have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in R313-32-630(1).

(3) The licensee shall retain a record of each calibration, intercomparison, and comparison for the duration of the license. For each calibration, intercomparison, or comparison, the record shall include the date, the model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by R313-32-630(1) and (2), the correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an intercomparison, the names of the individuals who performed the calibration, intercomparison, or comparison, and evidence that the intercomparison meeting was sanctioned by a calibration laboratory or radiologic physics center accredited by AAPM.

R313-32-632. Full Calibration Measurements.

(1) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

(a) before the first medical use of the unit; and

(b) before medical use under the following conditions:

(i) whenever spot-check measurements indicate that the output differs by more than five percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) following replacement of the source or following reinstallation of the teletherapy unit in a new location; or

(iii) following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(c) at intervals not exceeding one year.

(2) To satisfy the requirement of R313-32-632(1), full calibration measurements shall include determination of:

(a) the output within plus or minus three percent for the range of field sizes and for the distance or range of distances used for medical use;

(b) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(c) the uniformity of the radiation field and its dependence on the orientation of the useful beam;

(d) timer constancy and linearity over the range of use;

(e) on-off error; and

(f) the accuracy of all distance measuring and localization devices in medical use.

(3) A licensee shall use the dosimetry system described in R313-32-630(1) to measure the output for one set of exposure conditions. The remaining radiation measurements required in R313-32-632(2)(a) may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by R313-32-632(1) in accordance with either the procedures recommended by the Scientific Committee on Radiation Dosimetry of the American Association of Physicists in Medicine that are described in Physics in Medicine and Biology Vol. 16, No. 3, 1971, pp. 379-396, or by Task Group 21 of the Radiation Therapy Committee of the American Association of Physicists in Medicine that are described in Medical Physics Vol. 10, No. 6, 1983, pp. 741-711, and Vol. 11, No. 2, 1984, p. 213.

(5) A licensee shall correct mathematically the outputs determined in R313-32-632(2)(a) for physical decay for intervals not exceeding one month for cobalt-60 or six months for cesium-137.

(6) Full calibration measurement required in R313-32-632(1) and physical decay corrections required by R313-32-632(5) shall be performed by the licensee teletherapy physicist.

(7) A licensee shall retain a record of each calibration for the duration of the teletherapy unit source. The record shall include the date of the calibration, the manufacturer's name, model number, and serial number for both the teletherapy unit and the source, the model numbers and serial numbers of the instruments used to calibrate the teletherapy unit, tables that describe the output of the unit over the range of field sizes and for the range of distances used in radiation therapy, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, an assessment of timer linearity and constancy, the calculated on-off error, the estimated accuracy of each distance measuring or localization device, and the signature of the teletherapy physicist.

R313-32-634. Periodic Spot-Checks.

(1) A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that include determination of:

(a) timer constancy, and timer linearity over the range of use;

(b) on-off error;

(c) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(d) the accuracy of all distance measuring and localization devices used for medical use;

(e) the output for one typical set of operating conditions measured with the dosimetry system described in R313-32-630(2); and

(f) the difference between the measurement made in R313-32-634(2)(e) and the anticipated output, expressed as a percentage of the anticipated output (the value obtained at last full calibration corrected mathematically for physical decay).

(2) A licensee shall perform measurements required by R313-32-634(1) in accordance with procedures established by the teletherapy physicist. That individual need not actually perform the spot-check measurements.

(3) A licensee shall have the teletherapy physicist review the results of each spot-check within 15 days. The teletherapy physicist shall promptly notify the licensee in writing of the results of each spot-check. The licensee shall keep a copy of each written notification for three years.

(4) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks for each teletherapy facility once in each calendar month that assure proper operation of:

(a) electrical interlocks at each teletherapy room entrance;

(b) electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);

(c) beam condition indicator lights on the teletherapy unit, on the control console, and in the facility;

(d) viewing systems;

(e) treatment room doors from inside and outside the treatment room; and

(f) electrically assisted treatment room doors with the teletherapy unit electrical power turned off.

(5) A licensee shall arrange for prompt repair of any system identified in R313-32-634(4) that is not operating properly, and shall not use the teletherapy unit following door interlock malfunction until the interlock system has been repaired.

(6) A licensee shall retain a record of each spot-check required by R313-32-634(1) and (4) for three years. The record shall include the date of the spot-check, the manufacturer's name, model number, and serial number for both the teletherapy unit and source, the manufacturer's name, model number and serial number of the instrument used to measure the output of the teletherapy unit, an assessment of linearity and constancy, the calculated on-off error, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, the calculated on-off error, the determined accuracy of each distance measuring or localization device, the difference between the anticipated output and the measured output, notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system and doors, and the signature of the individual who performed the periodic spot-check.

R313-32-636. Safety Checks for Teletherapy Facilities.

(1) A licensee shall promptly check all systems listed in R313-32-634(4) for proper function after each installation of a teletherapy source and after making any change for which an amendment is required by R313-32-606(1) through (4).

(2) If the results of the checks required in R313-32-636(1) indicate the malfunction of a system specified in R313-32-634(4), the licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(3) A licensee shall retain for three years a record of the facility checks following installation of a source. The record shall include notations indicating the operability of each entrance door interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system, and doors, and the signature of the Radiation Safety Officer.

R313-32-641. Radiation Surveys for Teletherapy Facilities.

(1) Before medical use, after each installation of a teletherapy source, and after making any change for which an amendment is required by R313-32-606(1) through (4), the licensee shall perform radiation surveys with a portable radiation measurement survey instrument calibrated in accordance with R313-32-51 to verify that:

(a) the maximum and average dose rates at one meter from the teletherapy source with the source in the off position and the collimators set for a normal treatment field do not exceed 100 uSv (ten mrem) per hour and 20 uSv (two mrem) per hour, respectively;

(b) with the teletherapy source in the on position with the largest clinically available treatment field and with a scattering phantom in the primary beam of the radiation, that:

(i) radiation dose rates in restricted areas are not likely to cause any occupationally exposed individual to receive a dose in excess of the limits specified in R313-15-201; and

(ii) radiation dose rates in controlled or unrestricted areas are not likely to cause any individual member of the public to receive a dose in excess of the limits specified in R313-15-301.

(2) If the results of the surveys required in R313-32-641(1) indicate any radiation dose quantity per unit time in excess of the respective limit specified in R313-32-641(1), the licensee shall lock the control in the off position and not use the unit:

(a) except as may be necessary to repair, replace, or test the teletherapy unit shielding or the treatment room shielding; or

(b) until the licensee has received a specific exemption pursuant to R313-12-54.

(3) A licensee shall retain a record of the radiation measurements made following installation of a source for the duration of the license. The record shall include the date of the measurements, the reason the survey is required, the manufacturer's name, model number and serial number of the teletherapy unit, the source, the instrument used to measure radiation levels, each dose rate measured around the teletherapy source while in the off position and the average of all measurements, a plan of the areas surrounding the treatment room that were surveyed, the measured dose rate at several points in each area expressed in microseverts or millirem per hour, the calculated maximum quantity of radiation over a period of one week for each restricted and unrestricted area, and the signature of the Radiation Safety Officer.

R313-32-643. Modification of Teletherapy Unit or Room Before Beginning a Treatment Program.

(1) If the survey required by R313-32-641 indicates that an individual member of the public is likely to receive a dose in excess of the limits specified in R313-15-301, the licensee shall, before beginning the treatment program:

(a) either equip the unit with stops or add additional radiation shielding to ensure compliance with R313-15-301(3);

(b) perform the survey required by R313-32-641 again; and

(c) include in the report required by R313-32-645 the

results of the initial survey, a description of the modification made to comply with R313-32-643(1)(a), and the results of the second survey.

(2) As an alternative to the requirements set out in R313-32-643(1), a licensee may request a license amendment under R313-15-301(3) that authorizes radiation levels in unrestricted areas greater than those permitted by R313-15-301(1). A licensee shall not begin the treatment program until the license amendment has been issued.

R313-32-645. Reports of Teletherapy Surveys, Checks, Tests and Measurements.

A licensee shall mail a copy of the records required in R313-32-636, R313-32-641, R313-32-643, and the output from the teletherapy source expressed as coulombs/kilogram (roentgens) or gray (rad) per hour at one meter from the source and determined during the full calibration required in R313-32-632 to the Executive Secretary within thirty days following completion of the action that initiated the record requirement.

R313-32-647. Five-Year Inspection.

(1) A licensee shall have each teletherapy unit fully inspected and serviced during teletherapy source replacement or at intervals not to exceed five years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(2) This inspection and servicing shall only be performed by persons specifically licensed to do so by the Executive Secretary, the Nuclear Regulatory Commission, or an Agreement State.

(3) A licensee shall keep a record of the inspection and servicing for the duration of the license. The record shall contain the inspector's name, the inspector's license number, the date of inspection, the manufacturer's name and model number and serial number for both the teletherapy unit and source, a list of components inspected, a list of components serviced and the type of service, a list of components replaced, and the signature of the inspector.

R313-32-900. Radiation Safety Officer.

Except as provided in R313-32-901, the licensee shall require an individual fulfilling the responsibilities of the Radiation Safety Officer as provided in R313-32-21 to be an individual who:

(1) is certified by:

(a) American Board of Health Physics in comprehensive health physics;

(b) American Board of Radiology;

(c) American Board of Nuclear Medicine;

(d) American Board of Science in nuclear medicine;

(e) Board of Pharmaceutical Specialties in nuclear pharmacy;

(f) American Board of Medical Physics in radiation oncology physics;

(g) Royal College of Physicians and Surgeons of Canada in nuclear medicine;

(h) American Osteopathic Board of Radiology; or

(i) American Osteopathic Board of Nuclear Medicine; or

(2) has had classroom and laboratory training and experience as follows:

(a) 200 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) radiation biology; and

(v) radiopharmaceutical chemistry; and

(b) one year of full time experience as a radiation safety technologist at a medical institution under the supervision of the individual identified as the Radiation Safety Officer on a license issued by the Executive Secretary, Nuclear Regulatory Commission or Agreement State license that authorizes the medical use of radioactive material; or

(3) be an authorized user identified on the licensee's license.

R313-32-901. Training for Experienced Radiation Safety Officer.

An individual identified as a Radiation Safety Officer on a license issued by the Executive Secretary, Nuclear Regulatory Commission or Agreement State before January 1, 1989, need not comply with the training requirements of R313-32-900.

R313-32-910. Training for Uptake, Dilution, and Excretion Studies.

Except as provided in R313-32-970 and R313-32-971, the licensee shall require the authorized user of a radiopharmaceutical in R313-32-100(1) to be a physician who:

(1) is certified in:

(a) nuclear medicine by the American Board of Nuclear Medicine;

(b) diagnostic radiology by the American Board of Radiology;

(c) diagnostic radiology or radiology by the American Osteopathic Board of Radiology;

(d) nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(e) American Osteopathic Board of Nuclear Medicine in nuclear medicine; or

(2) has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, and supervised clinical experience as follows:

(a) 40 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) radiation biology; and

(v) radiopharmaceutical chemistry; and

(b) 20 hours of supervised clinical experience under the supervision of an authorized user and that includes:

(i) examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(ii) selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(iii) administering dosages to patients or human research subjects and using syringe radiation shields;

(iv) collaborating with the authorized user in the interpretation of radionuclide test results; and

(v) patient or human research subject follow-up; or

(3) has successfully completed a six-month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in the topics identified in R313-32-910(2).

R313-32-920. Training for Imaging and Localization Studies.

Except as provided in R313-32-970 or R313-32-971, the licensee shall require the authorized user of a radiopharmaceutical, generator, or reagent kit in R313-32-200(1) to be a physician who:

(1) is certified in:

(a) nuclear medicine by the American Board of Nuclear Medicine;

(b) diagnostic radiology by the American Board of Radiology;

(c) diagnostic radiology or radiology by the American Osteopathic Board of Radiology;

(d) nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(e) American Osteopathic Board of Nuclear Medicine in nuclear medicine; or

(2) has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised work experience, and supervised clinical experience as follows:

(a) 200 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) radiopharmaceutical chemistry; and

(v) radiation biology; and

(b) 500 hours of supervised work experience under the supervision of an authorized user that includes:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;

(iii) calculating and safely preparing patient or human research subject dosages;

(iv) using administrative controls to prevent the misadministration of radioactive material;

(v) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) eluting technetium-99m from generator systems, measuring and testing the elute for molybdenum-99 and alumina contamination, and processing the elute with reagent kits to prepare technetium-99m labeled radiopharmaceuticals; and

(c) 500 hours of supervised clinical experience under the supervision of the authorized user that includes:

(i) examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(ii) selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(iii) administering dosages to patients or human research subjects and using syringe radiation shields;

(iv) collaborating with the authorized user in the interpretation of radioisotope test results; and

(v) patient or human research subject follow-up; or

(3) has successfully completed a six-month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in the topics identified in R313-32-920(2).

R313-32-930. Training for Therapeutic Use of Unsealed Radioactive Material.

Except as provided in R313-32-970, the licensee shall require the authorized user of radiopharmaceuticals in R313-32-300 to be a physician who:

(1) is certified by:

(a) the American Board of Nuclear Medicine;

(b) the American Board of Radiology in radiology, therapeutic radiology, or radiation oncology;

(c) nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(d) the American Osteopathic Board of Radiology after 1984; or

(2) has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals, and supervised clinical experience as follows:

(a) 80 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology; and

(b) supervised clinical experience under the supervision of an authorized user at a medical institution that includes:

(i) use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten individuals; and

(ii) use of iodine-131 for treatment of thyroid carcinoma in three individuals.

R313-32-932. Training for Treatment of Hyperthyroidism.

Except as provided in R313-32-970, the licensee shall require the authorized user of only iodine-131 for the treatment of hyperthyroidism to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating hyperthyroidism, and supervised clinical experience as follows:

(1) 80 hours of classroom and laboratory training that

includes:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity; and

(d) radiation biology; and

(2) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for diagnosis of thyroid function, and the treatment of hyperthyroidism in ten individuals.

R313-32-934. Training for Treatment of Thyroid Carcinoma.

Except as provided in R313-32-970, the licensee shall require the authorized user of only iodine-131 for the treatment of thyroid carcinoma to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating thyroid carcinoma, and supervised clinical experience as follows:

(1) 80 hours of classroom and laboratory training that includes:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity; and

(d) radiation biology; and

(2) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for the treatment of thyroid carcinoma in three individuals.

R313-32-940. Training for Use of Brachytherapy Sources.

Except as provided in R313-32-970 the licensee shall require the authorized user of a brachytherapy source listed in R313-32-400 for therapy to be a physician who:

(1) is certified in:

(a) radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(b) radiation oncology by the American Osteopathic Board of Radiology;

(c) radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(d) therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(2) is in the active practice of therapeutic radiology, has had classroom and laboratory training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources, supervised work experience, and supervised clinical experience as follows:

(a) 200 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology;

(b) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) checking survey meters for proper operation;

(iii) preparing, implanting, and removing sealed sources;

(iv) maintaining running inventories of material on hand;

(v) using administrative controls to prevent the misadministration of radioactive material; and

(vi) using emergency procedures to control radioactive material; and

(c) three years of supervised clinical experience that includes one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

(i) examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;

(ii) selecting the proper brachytherapy sources and dose and method of administration;

(iii) calculating the dose; and

(iv) post-administration follow-up and review of case histories in collaboration with the authorized user.

R313-32-941. Training for Ophthalmic Use of Strontium-90.

Except as provided in R313-32-970, the licensee shall require the authorized user of only strontium-90 for ophthalmic radiotherapy to be a physician who is in the active practice of therapeutic radiology or ophthalmology, and has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy as follows:

(1) 24 hours of classroom and laboratory training that includes:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity; and

(d) radiation biology.

(2) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five individuals that includes:

(a) examination of each individual to be treated;

(b) calculation of the dose to be administered;

(c) administration of the dose; and

(d) follow-up and review of each individual's case history.

R313-32-950. Training for Use of Sealed Sources for Diagnosis.

Except as provided in R313-32-970, the licensee shall require the authorized user of a sealed source in a device listed in R313-32-500 to be a physician, dentist, or podiatrist who:

(1) is certified in

(a) radiology, diagnostic radiology, therapeutic radiology,

or radiation oncology by the American Board of Radiology;

(b) nuclear medicine by the American Board of Nuclear Medicine;

(c) diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

(d) nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(2) has had eight hours of classroom and laboratory training in basic radioisotope handling techniques specifically applicable to the use of the device that includes:

(a) radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;

(b) radiation biology;

(c) radiation protection; and

(d) training in the use of the device for the uses requested.

R313-32-960. Training for Teletherapy.

Except as provided in R313-32-970, the licensee shall require the authorized user of a sealed source listed in R313-32-600 in a teletherapy unit to be a physician who:

(1) is certified in:

(a) radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(b) radiation oncology by the American Osteopathic Board of Radiology;

(c) radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(d) therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(2) is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope techniques applicable to the use of a sealed source in a teletherapy unit, supervised work experience, and supervised clinical experience as follows:

(a) 200 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology;

(b) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

(i) review of the full calibration measurements and periodic spot checks;

(ii) preparing treatment plans and calculating treatment times;

(iii) using administrative controls to prevent misadministrations;

(iv) implementing emergency procedures to be followed in the event of the abnormal operation of a teletherapy unit or console; and

(v) checking and using survey meters; and

(c) three years of supervised clinical experience that includes one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

(i) examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment, and any limitations or contraindications;

(ii) selecting the proper dose and how it is to be administered;

(iii) calculating the teletherapy doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and

(iv) post-administration follow-up and review of case histories.

R313-32-961. Training for Teletherapy Physicist.

The licensee shall require the teletherapy physicist to be an individual who:

(1) is certified by the American Board of Radiology in:

(a) therapeutic radiological physics;

(b) roentgen ray and gamma ray physics;

(c) x-ray and radium physics; or

(d) radiological physics; or

(2) is certified by the American Board of Medical Physics in radiation oncology physics; or

(3) holds a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and has completed one year of full time training in therapeutic radiological physics and an additional year of full time work experience under the supervision of a teletherapy physicist at a medical institution that includes the tasks listed in R313-32-59, R313-32-632, R313-32-634 and R313-32-641.

R313-32-970. Training for Experienced Authorized Users.

Physicians, dentists, or podiatrists identified as authorized users for the medical, dental, or podiatric use of radioactive material on a license issued by the Executive Secretary, Nuclear Regulatory Commission, or Agreement State license issued before January 1, 1989, who perform only those methods of use for which they were authorized on that date need not comply with the training requirements of R313-32-900 to R313-32-961.

R313-32-971. Physician Training in a Three Month Program.

A physician who, before October 1, 1988, began a three month nuclear medicine training program approved by the Accreditation Council for Graduate Medical Education and has successfully completed the program need not comply with the requirements of R313-32-910 or R313-32-920.

R313-32-972. Recentness of Training.

The training and experience specified in R313-32-900 through R313-32-981 shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

R313-32-980. Training for an Authorized Nuclear Pharmacist.

The licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties, or

(2)(a) has completed 700 hours in a structured educational program consisting of both:

(i) didactic training in the following areas:

(A) radiation physics and instrumentation;

(B) radiation protection;

(C) mathematics pertaining to the use and measurement of radioactivity;

(D) chemistry of radioactive material for medical use; and

(E) radiation biology; and

(ii) supervised experience in a nuclear pharmacy involving the following:

(A) shipping, receiving, and performing related radiation surveys;

(B) using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(C) calculating, assaying, and safely preparing dosages for patients or human research subjects;

(D) using administrative controls to avoid mistakes in the administration of radioactive material;

(E) using procedures to prevent or minimize contamination and using proper decontamination procedures; and

(b) has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

R313-32-981. Training for Experienced Nuclear Pharmacists.

A licensee may apply for and must receive a license amendment identifying an experienced nuclear pharmacist as an authorized nuclear pharmacist before it allows this individual to work as an authorized nuclear pharmacist. A pharmacist who has completed a structured educational program as specified in R313-32-980(2)(a) before January 1, 1998 and who is working in a nuclear pharmacy would qualify as an experienced nuclear pharmacist. An experienced nuclear pharmacist need not comply with the requirements on preceptor statement (See R313-32-980(2)(b)) and recentness of training (See R313-32-972) to qualify as an authorized nuclear pharmacist.

R313-32-999. Resolution of Conflicting Requirements During Transition Period.

If the rules in R313-32 conflict with the licensee's radiation safety program as identified in its license, and if that license was approved by the Bureau of Radiation Control, Department of Health, before January 1, 1989, and has not been renewed since January 1, 1989, then the requirements in the license will apply. However, if the licensee exercises its privilege to make minor changes in its radiation safety procedures that are not potentially important to safety under R313-32-31, the portion changed shall comply with the requirements of R313-32. At the time of license renewal and thereafter, these amendments to R313-32 shall apply.

KEY: radioactive material, radiopharmaceutical, brachytherapy, nuclear medicine
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R313. Environmental Quality, Radiation Control.
R313-34. Requirements for Irradiators.
R313-34-1. Purpose and Authority.

(1) Rule R313-34 prescribes requirements for the issuance of licenses authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(3) and 19-3-104(6).

(3) The requirements of Rule R313-34 are in addition to, and not in substitution for, the other requirements of these rules.

R313-34-2. Scope.

(1) Rule R313-34 shall apply to panoramic irradiators that have either dry or wet storage of the radioactive sealed sources; underwater irradiators in which both the source and the product being irradiated are under water; and irradiators whose dose rates exceed 5 grays (500 rads) per hour at 1 meter from the radioactive sealed sources in air or in water, as applicable for the irradiator type.

(2) The requirements of Rule R313-34 shall not apply to self-contained dry-source-storage irradiators in which both the source and the area subject to irradiation are contained within a device and are not accessible by personnel, medical radiology or teletherapy, the irradiation of materials for nondestructive testing purposes, gauging, or open-field agricultural irradiations.

R313-34-3. Clarifications or Exemptions.

For purposes of Rule R313-34, 10 CFR 36, 2001 ed., is incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following 10 CFR sections: 36.1, 36.5, 36.8, 36.11, 36.17, 36.19(a), 36.91, and 36.93;

(2) The substitution of the following:

(a) Radiation Control Act for Atomic Energy Act of 1954;

(b) Utah Radiation Control Rules for the reference to NRC regulations and the Commission's regulations;

(c) The Executive Secretary or the Executive Secretary's for the Commission or the Commission's, and NRC in the following 10 CFR sections: 36.13, 36.13(f), 36.15, 36.19(b), 36.53(c), 36.69, and 36.81(a), 36.81(d) and 36.81(e); and

(d) In 10 CFR 36.51(a)(1), Rule R313-15 for NRC;

(3) Appendix B of 10 CFR Part 20 refers to the 2001 ed. of 10 CFR; and

(4) The substitution of Title R313 references for the following 10 CFR references:

(a) Section R313-12-51 for reference to 10 CFR 30.51;

(b) Rule R313-15 for the reference to 10 CFR 20;

(c) Subsection R313-15-501(3) for the reference to 10 CFR 20.1501(c);

(d) Section R313-15-902 for the reference to 10 CFR 20.1902;

(e) Rule R313-18 for the reference to 10 CFR 19;

(f) Section R313-19-41 for the reference to 10 CFR 30.41;

(g) Section R313-19-50 for the reference to 10 CFR 30.50;

(h) Section R313-22-33 for the reference to 10 CFR 30.33;

(i) Section R313-22-210 for the reference to 10 CFR 32.210;

(j) Section R313-22-35 for the reference to 10 CFR 30.35; and

(k) Rule R313-70 for the reference to 10 CFR 170.31.

KEY: irradiator, survey, radiation, radiation safety
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R313. Environmental Quality, Radiation Control.
R313-38. Licenses and Radiation Safety Requirements for Well Logging.
R313-38-1. Purpose and Authority.

(1) Rule R313-38 prescribes requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well logging in a single well. This rule also prescribes radiation safety requirements for persons using licensed materials in these operations.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(3) and 19-3-104(6).

(3) The provisions and requirements of Rule R313-38 are in addition to, and not in substitution for, the other requirements of these rules. In particular, the provisions of Rules R313-15, R313-18, R313-19, and R313-22 apply to applicants and licensees subject to these rules.

R313-38-2. Scope.

(1) The requirements of Rule R313-38 do not apply to the issuance of a license authorizing the use of licensed material in tracer studies involving multiple wells, such as field flooding studies, or to the use of sealed sources auxiliary to well logging but not lowered into wells.

R313-38-3. Clarifications or Exceptions.

For purposes of Rule R313-38, 10 CFR 39 (2001), is incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following 10 CFR sections: 39.1, 39.5, 39.8, 39.11, 39.101, and 39.103;

(2) The exclusion of the following 10 CFR references within 10 CFR 39: Sec. 40.32, and Sec. 70.33;

(3) The exclusion of "licensed material" in 10 CFR 39.2 definitions;

(4) The substitution of the following wording:

(a) License for reference to NRC license;

(b) Utah Radiation Control Rules for the references to:

(i) The Commission's regulations;

(ii) The NRC regulations;

(iii) NRC regulations; and

(iv) Pertinent Federal regulations;

(c) Executive Secretary for reference to Commission, except as stated in Subsection R313-38-3(4)(d);

(d) Representatives of the Executive Secretary for the references to the Commission in:

(i) 10 CFR 39.33(d);

(ii) 10 CFR 39.35(a);

(iii) 10 CFR 39.37;

(iv) 10 CFR 39.39(b); and

(v) 10 CFR 39.67(f);

(e) Executive Secretary or the Executive Secretary for references to:

(i) NRC in:

(A) 10 CFR 39.63(l);

(B) 10 CFR 39.77(c)(1)(i) and (ii); and

(C) 10 CFR 39.77(d)(9); and

(ii) Appropriate NRC Regional Office in:

(A) 10 CFR 39.77(a);

(B) 10 CFR 39.77(c)(1); and

(C) 10 CFR 39.77(d);

(f) Executive Secretary, the U.S. Nuclear Regulatory Commission or an Agreement State for the references to:

(i) Commission or an Agreement State in:

(A) 10 CFR 39.35(b); and

(B) 10 CFR 39.43(d) and (e); and

(ii) Commission pursuant to Sec. 39.13(c) or by an Agreement State in:

(A) 10 CFR 39.43(c); and

(B) 10 CFR 39.51;

(g) In 10 CFR 39.35(d)(1), persons specifically licensed by the Executive Secretary, the U.S. Nuclear Regulatory Commission, or an Agreement State for the reference to an NRC or Agreement State licensee that is authorized; and

(h) In 10 CFR 39.35(d)(2), reports of test results for leaking or contaminated sealed sources shall be made pursuant to Section R313-15-1208, for the reference to the following statement:

(i) The licensee shall submit a report to the appropriate NRC Regional Office listed in appendix D of part 20 of this chapter, within 5 days of receiving the test results. The report must describe the equipment involved in the leak, the test results, any contamination which resulted from the leaking source, and the corrective actions taken up to the time the report is made; and

(i) In 10 CFR 39.75(e), a U.S. Nuclear Regulatory Commission or an Agreement State for the reference to the Agreement State;

(5) The substitution of the following Title R313 references for specific 10 CFR references:

(a) Section R313-12-3 for the reference to Sec. 20.1003 of this chapter;

(b) Section R313-12-54 for the reference to 10 CFR 39.17;

(c) Subsection R313-12-55(1) for the reference to 10 CFR 39.91;

(d) Rule R313-15 for references to:

(i) Part 20; and

(ii) Part 20 of this chapter;

(e) Subsection R313-15-901(1) for the reference to Sec. 20.1901(a);

(f) Section R313-15-906 for the reference to Sec. 20.205 of this chapter;

(g) Sections R313-15-1201 through R313-15-1203 for the references to:

(i) Secs. 20.2201-20.2202; and

(ii) Sec. 20.2203;

(h) Rule R313-18 for the reference to part 19;

(i) Section R313-19-30 for the reference to Sec. 150.20 of this chapter;

(j) Section R313-19-50 for the references to:

(i) Sec. 30.50; and

(ii) Part 21 of this chapter;

(k) Section R313-19-71 for the reference to Sec. 30.71;

(l) Section R313-19-100 for the references to:

(i) 10 CFR Part 71; and

(ii) Sec. 71.5 of this chapter; and

(m) Section R313-22-33 for the reference to 10 CFR 30.33;

KEY: radioactive material, well logging, surveys, subsurface tracer studies
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R315. Environmental Quality, Solid and Hazardous Waste.
R315-2. General Requirements - Identification and Listing of Hazardous Waste.
R315-2-1. Purpose and Scope.

(a) This rule identifies those solid wastes which are subject to regulation as hazardous wastes under R315-3 through R315-9 and R315-13 of these rules and which are subject to the notification requirements of these rules.

(b)(1) The definition of solid waste contained in this rule applies only to wastes that also are hazardous for purposes of the rules implementing Chapter 6, Title 19. For example, it does not apply to materials such as non-hazardous scrap, paper, textiles, or rubber that are not otherwise hazardous wastes and that are recycled.

(2) This rule identifies only some of the materials which are solid wastes and hazardous wastes under the Utah Solid and Hazardous Waste Act. A material which is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of section 19-6-109, the Board has reason to believe that the material may be a solid waste within the meaning of subsection 19-6-102(13) and a hazardous waste within the meaning of subsection 19-6-102(7) or

(ii) In the case of section 19-6-115, the material is presenting an imminent and substantial danger to human health or the environment.

R315-2-2. Definition of Solid Waste.

(a)(1) A solid waste is any discarded material that is not excluded by subsection R315-2-4(a) or that is not excluded by variance granted under R315-2-18 and R315-2-19.

(2) A discarded material is any material which is:

(i) Abandoned, as explained in paragraph (b) of this section; or

(ii) Recycled, as explained in paragraph (c) of this section; or

(iii) Considered inherently waste-like, as explained in paragraph (d) of this section.

(b) Materials are solid waste if they are abandoned by being;

(1) Disposed of; or

(2) Burned or incinerated; or

(3) Accumulated, stored, or treated, but not recycled, before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are recycled - or accumulated, stored, or treated before recycling - as specified in paragraphs (c)(1) through (c)(4) of this section. Table 1 of 40 CFR 261.2, 1997 ed., is adopted and incorporated by reference and shall be effective through June 30, 1999. Table 1 of 40 CFR 261.2, 1998 ed., is adopted and incorporated by reference, except that the heading for Column 3 shall read "reclamation (Section 261.2(c)(3)) (except as provided in 261.4(a)(16) for mineral processing secondary materials), and shall be effective July 1, 1999.

(1) Used in a manner constituting disposal

(i) Materials noted with "*" in Column 1 of Table 1 of 40 CFR 261.2, are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land, in which cases the product itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery.

(i) Materials noted with a "*" in Column 2 of Table 1 of 40 CFR 261.2 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels, in which cases the fuel itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with a "*" in Column 3 of Table 1 of 40 CFR 261.2 are solid wastes when reclaimed, except as provided under R315-2-4(a)(16), which shall be effective on July 1, 1999. Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed.

(4) Accumulated speculatively. Materials noted with a "*" in Column 4 of Table 1 of 40 CFR 261.2 are solid wastes when accumulated speculatively.

(d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020, F021, unless used as an ingredient to make a product at the site of generation, F022, F023, F026, and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in R315-2-9 through R315-2-10 and R315-2-24, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in 40 CFR 261 Appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(3) The Board will use the following criteria to add wastes to that list:

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in R315-50-10 and these constituents are not ordinarily found in raw materials or products for which the materials substitute, or are found in raw materials or products in smaller concentrations, and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) Materials that are not solid waste when recycled.

(1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. After June 30, 1999, in cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at R315-2-4(a)(16) apply rather than this provision.

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, described in paragraphs (e)(1)(i)-(iii) of this section:

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section.

(f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce rules implementing the Utah Solid and Hazardous Waste Act who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation, such as contracts showing that a second person uses the material as an ingredient in a production process, to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

R315-2-3. Definition of Hazardous Waste.

(a) A solid waste as defined in section R315-2-2 is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under subsection R315-2-4(b); and

(2) It meets any of the following criteria:

(i) It is listed in sections R315-2-10 or R315-2-11 and has not been excluded from this section under sections R315-2-16 or R315-2-17.

(ii) It exhibits any of the characteristics of hazardous waste identified in R315-2-9. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under R315-2-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under R315-2-9 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table I, 40 CFR 261.24, which R315-2-9(g)(2) incorporates by reference, that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(iii) It is a mixture of solid waste and a hazardous waste that is listed in sections R315-2-10 or R315-2-11 solely because it exhibits one or more of the characteristics of hazardous waste identified in section R315-2-9, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in section R315-2-9 or unless the solid waste is excluded from regulation under R315-2-4(b)(7) and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in section R315-2-9 for which the hazardous waste listed in R315-2-10 or R315-2-11 was listed. However, nonwastewater mixtures are still subject to the requirements of R315-13, which incorporates by reference 40 CFR 268, even if they no longer exhibit a characteristic at the point of land disposal.

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in sections R315-2-10 or R315-2-11 and has not been excluded from paragraph (a)(2) of this section under sections R315-2-16 and R315-2-17; however, the following mixtures of solid wastes and hazardous wastes listed in sections R315-2-10 or R315-2-11 are not hazardous wastes, except by application of paragraph (a)(2)(i) or (ii) of this section, if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act, 33 U.S.C. 1251 et seq., including wastewater at facilities which have eliminated the discharge of wastewater, and:

(A) One or more of the following spent solvents - carbon tetrachloride, tetrachloroethylene, trichloroethylene - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 1 part per million;

(B) One or more of the following spent solvents listed in R315-2-10(e), which incorporates by reference 40 CFR 261.31 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million;

(C) One of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation - heat exchanger bundle cleaning sludge from the petroleum refining industry, EPA Hazardous Waste No. K050, crude oil storage tank sediment from petroleum refining operations, EPA Hazardous Waste No. K169, clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations,

EPA Hazardous Waste No. K170, spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and spent hydrorefining catalyst, EPA Hazardous Waste No. K172; or

(D) A discarded commercial chemical product, or chemical intermediate listed in R315-2-11, arising from "de minimis" losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph, "de minimis" losses include those from normal material handling operations, for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-2-10 or R315-2-11, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided it is demonstrated that the wastes' combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(F) One or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157 - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine, including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized, divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156 - Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-2-10(e) and (f), which incorporates by reference 40 CFR 261 Subpart D. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in sections R315-2-10 or R315-2-11, when the waste first meets the listing description set forth in sections R315-2-10 or R315-2-11.

(2) In the case of the mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in sections R315-2-10 or R315-2-11 is first added to the solid waste.

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in section R315-2-9.

(c) Unless and until it meets the criteria of paragraph (d) of this section:

(1) A hazardous waste will remain a hazardous waste.

(2)(i) Except as otherwise provided in paragraph (c)(2)(ii) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate, but not including precipitation run-off, is a hazardous waste. However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, SIC Codes 331 and 332.

(B) Wastes from burning any of the materials exempted from regulations by 40 CFR 261.6(a)(3)(iii) and (v). R315-2-6 incorporates by reference the requirements of 40 CFR 261.6 concerning recyclable materials.

(C)(1) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or

industrial furnaces (as defined in 40 CFR 260.10 (6), (7), and (13) of the definition for "Industrial Furnace" which R315-1-1(b) incorporates by reference), that are disposed in solid waste landfills regulated under R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements shall be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE

Constituent Maximum for any single composite sample - TCLP (mg/l)

Generic exclusion levels for K061 and K062 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total)(mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification shall be placed in the facility's files and sent to the Executive Secretary for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste landfills regulated under R315-301 through R315-320. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the solid waste landfill regulated under R315-301 through R315-320 receiving the waste changes. However, the generator or treater need only notify the Executive Secretary on an annual basis if such changes occur. Such notification and certification should be sent to the Executive Secretary by the end of the calendar year, but no later than December 31. The notification shall include the following information: The name and address of the solid waste landfill regulated under R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and Spent hydrorefining catalyst, EPA Hazardous Waste N0. K172.

(d) Any solid waste described in paragraph (c) of this section is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in section R315-2-9. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of R315-13 which incorporates by reference 40 CFR 268, even if they no longer exhibit a characteristic at the point of land disposal.

(2) In the case of a waste which is a listed waste under sections R315-2-10 or R315-2-11, contains a waste listed under sections R315-2-10 or R315-2-11, or is derived from a waste listed in sections R315-2-10 or R315-2-11, it also has been excluded from paragraph (c) of this section under R315-2-16 and R315-2-17.

(e) Notwithstanding R315-2-3(a) through (d) and provided the debris as defined in R315-13, which incorporates by reference 40 CFR 268, does not exhibit a characteristic identified in R315-2-9, the following materials are not subject to regulation under R315-1, R315-2 to R315-8, R315-13, and R315-14:

(1) Hazardous debris as defined in R315-13, which incorporates by reference 40 CFR 268, that has been treated using one of the required extraction or destruction technologies specified in R315-13, which incorporates by reference 40 CFR 268.45 Table 1; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in R315-13, which incorporates by reference 40 CFR 268, that the Board, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

R315-2-4. Exclusions.

(a) MATERIALS WHICH ARE NOT SOLID WASTES.

The following materials are not solid wastes for the purpose of this rule:

(1) Domestic sewage or any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, black liquor that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 261.1(c), 40 CFR.

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 261.1(c), 40 CFR.

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in R315-2-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused onsite at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in R315-7-28, which incorporates by reference 40 CFR 265.440 - 445, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the Executive Secretary a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Executive Secretary for reinstatement. The Executive Secretary may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in R315-2-9(g) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911 - including distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in R315-2-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under R315-2-4. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under R315-2-10, R315-2-11, R315-2-24, and R315-2-26, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and

with the same conditions as described in R315-2-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5152.) Recovered oil does not include oil-bearing hazardous wastes listed in R315-2-10, R315-2-11, R315-2-24, and R315-2-26; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 19-6-703(19).

(13) Excluded scrap metal, processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal, being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays, and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Comparable fuels or comparable syngas fuels, i.e., comparable/syngas fuels, that meet the requirements of R315-2-26, which incorporates by reference 40 CFR 261.38.

(17) Secondary materials, i.e., sludges, by-products, and spent materials as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1, other than hazardous wastes listed in R315-2-10 and 11, which incorporates by reference 40 CFR 261 Subpart D, generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by benefication, provided that:

(i) The secondary material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The secondary material is not accumulated speculatively;

(iii) Except as provided in (iv), the secondary material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment as defined R315-1-1(b), which incorporates by reference 40 CFR 260.10, and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Executive Secretary may make a site-specific determination, after public review and comment, that only solid mineral processing secondary materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing secondary materials do not contain any free liquid. The Executive Secretary must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Executive Secretary must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing secondary material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Executive Secretary must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides a notice to the Executive Secretary, identifying the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in nonland-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of R315-2-4(b)(7), mineral processing secondary materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(vii) R315-2-4(a)(16) becomes effective July 1, 1999.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in R315-2-9(d), and/or toxicity for benzene, R315-2-9(g), waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing

facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or napthenic acid unless the material is placed on the land, or accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(b) SOLID WASTES WHICH ARE NOT HAZARDOUS WASTES.

The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, such as refuse-derived fuel or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if the facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources and

(B) Solid waste from commercial of industrial sources that does not contain hazardous waste; and

(ii) The facility does not accept hazardous wastes and the owner or operator of the facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in the facility.

(2) Solid wastes generated by any of the following and which are returned to the soil as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6) The following additional solid wastes:

(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in sections R315-2-10 or R315-2-11 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively, or nearly exclusively, and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A),(B), and (C) of this section, so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome blue trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome blue shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair/pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112 for facilities that burn or process hazardous waste.

(i) For purposes of R315-2-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching

(except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of R315-2-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production ;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

(H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

(L) Air pollution control dust/sludge from iron blast furnaces;

(M) Iron blast furnace slag;

(N) Treated residue from roasting/leaching of chrome ore;

(O) Process wastewater from primary magnesium processing by the anhydrous process;

(P) Process wastewater from phosphoric acid production;

(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(S) Chloride process waste solids from titanium tetrachloride production;

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under R315-2-4(b) if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic (TC) of R315-2-9(g), Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action requirements under R311-202, which incorporates by reference 40 CFR 280.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in R315-2-9(e) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and the Division of Solid and Hazardous Waste, Dept. of Environmental Quality, State of Utah, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(14) Non-terne plated used oil filters that are not mixed with wastes listed in R315-2-10(e) and (f) and R315-2-11, which incorporate by reference 40 CFR 261 Subpart D, if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, and K172 if these wastes had been generated after the effective date of the listing, February 11, 1999;

(ii) The solid wastes described in paragraph R315-2-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a

POTW by truck, rail, or dedicated pipe, is subject to regulation under R317-8 of the Utah Water Quality Rules.

(v) After February 13, 2001, leachate or gas condensate will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge, There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(16) The requirements as found in 40 CFR 261.4(b)(18), 2001 ed., are adopted and incorporated by reference with the following exceptions:

(i) Substitute "EPA and the Executive Secretary" for all federal regulation references made to "EPA";

(ii) Substitute "Executive Secretary" for all federal regulation references made to "state of Utah."

(c) HAZARDOUS WASTES WHICH ARE EXEMPTED FROM CERTAIN RULES.

A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit is not subject to these regulations or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of products or raw materials.

(d) SAMPLES

(1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or compositions, is not subject to any requirements of these rules when:

(i) The sample is being transported to a laboratory for the purpose of testing;

(ii) The sample is being transported back to the sample collector after testing;

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing;

(iv) The sample is being stored in a laboratory before testing;

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose, for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary.

(2) In order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(1) The sample collector's name, mailing address, and telephone number;

(2) The laboratory's name, mailing address, and telephone number;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

(e) TREATABILITY STUDY SAMPLES.

(1) Except as provided in paragraph (e)(2) of this Section, a person who generates or collects samples for the purpose of conducting treatability studies as defined in section R315-1-1, which incorporates by reference the definitions of 40 CFR 260.10, are not subject to any requirement of R315-2, R315-5, and R315-6, or to the notification requirements of Section 3010 of RCRA, nor are these samples included in the quantity determinations of R315-2-5, which incorporates by reference the requirements concerning conditionally exempt small quantity generators of 40 CFR 261.5 and R315-5-3.34, which incorporates by reference the requirements concerning waste accumulation time for generators of 40 CFR 262.34(d) when:

(i) the sample is being collected and prepared for transportation by the generator or sample collector;

(ii) the sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses, in "treatability studies," no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) the sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met;

(A) the transportation of each sample shipment complies

with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) if the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(1) the name, mailing address, and telephone number of the originator of the sample;

(2) the name, address, and telephone number of the facility that will perform the treatability study;

(3) the quantity of the sample;

(4) the date of shipment; and

(5) a description of the sample, including its EPA Hazardous Waste Number.

(iv) the sample is shipped to a laboratory or testing facility which is exempt under R315-2-1.3(f) (40 CFR 261.4(f)) or has an appropriate RCRA permit or interim status;

(v) the generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) copies of the shipping documents;

(B) a copy of the contract with the facility conducting the treatability study;

(C) documentation showing:

(1) the amount of waste shipped under this exemption;

(2) the name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(3) the date the shipment was made; and

(4) whether or not unused samples and residues were returned to the generator.

(vi) the generator reports the information required under paragraph (e)(v)(C) of this section in its biennial report.

(3) The Executive Secretary may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Executive Secretary may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e)(2) (i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, e.g., batch versus continuous, size of the unit undergoing testing, particularly in relation to scale-up considerations, the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and time frames allowed in paragraph (e)(3) (i) and (ii) of this section are subject to all the provisions in paragraphs (e) (1) and (e)(2) (iii) through (vi) of this section. The generator or sample collector must apply to the Executive Secretary and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Executive Secretary considers necessary.

(f) SAMPLES UNDERGOING TREATABILITY STUDIES AT LABORATORIES AND TESTING FACILITIES.

Samples undergoing treatability studies and the laboratory or testing facility that conducts these treatability studies, to the extent these facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of this rule, R315-3 through R315-8, and R315-13, or to the notification requirements of Section 3010 of RCRA provided that the conditions of paragraphs (f)(1) through (11) of this Section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f)(1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f)(1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Executive Secretary in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies

does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

(i) the name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) the date the shipment was received;

(iii) the quantity of waste accepted;

(iv) the quantity of "as received" waste in storage each day;

(v) the date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) the date the treatability study was concluded; and

(vii) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Executive Secretary by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) the name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) the types, by process, of treatability studies conducted;

(iii) the names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;

(iv) the total quantity of waste in storage each day;

(v) the quantity and types of waste subjected to treatability studies;

(vi) when each treatability study was conducted; and

(vii) the final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under R315-2-3 and, if so, are subject to R315-2 through R315-8, and R315-13, unless the residues and unused samples are returned to the sample originator under the exemption of paragraph (e) of this section.

(11) The facility notifies the Executive Secretary by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) DREDGED MATERIAL THAT IS NOT A HAZARDOUS WASTE.

Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this paragraph (g), the following definitions apply:

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or the Utah State Division of Water Quality;

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in paragraphs R315-2-4(g)(2)(i) and (ii), as provided for in Corps regulations.

R315-2-5. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.

The requirements of 40 CFR 261.5, 1996 ed., are adopted and incorporated by reference.

R315-2-6. Requirements for Recyclable Materials.

The requirements of 40 CFR 261.6, 1998 ed., as amended by 63 FR 42110, August 6, 1998, are adopted and incorporated by reference within this rule, except for the following changes:

(a) Paragraph 40 CFR 261.6(a)(5) shall be amended to read as follows:

Hazardous waste as identified in 40 CFR 262.80(a) that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in Section 262.58(a)(1)) for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H, if it is subject to either the Federal manifesting requirements of 40 CFR Part 262, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.

R315-2-7. Residues of Hazardous Waste in Empty Containers.

(a)(1) Any hazardous waste remaining in either

(i) an empty container, or

(ii) an empty inner liner removed from a container, as

defined in paragraph (b) of this section, is not subject to regulation under R315-2 through R315-13.

(2) Any hazardous waste in either:

(i) a container that is not empty, or

(ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under R315-2 through R315-13.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as acute hazardous waste listed in sections R315-2-10 or R315-2-11 is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

(ii) No more than 2.5 centimeters, one inch, of residue remains on the bottom of the container or inner liner; or

(iii)(A) No more than three percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in sections R315-2-10 or R315-2-11 is empty if:

(i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

R315-2-8. PCB Wastes Regulated under the Toxic Substance Control Act, 42 U.S.C. et seq.

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under part 761 40 CFR and that are hazardous only because they fail the test for the Toxicity Characteristic, hazardous codes D018 through D043 only, are exempt from regulation under R315-2 through R315-50 and the notification requirements of section 3010 of RCRA.

R315-2-9. Characteristics of Hazardous Waste.

(a) GENERAL.

(1) A solid waste, as defined in section R315-2-2, which is not excluded from regulation as a hazardous waste under R315-2-4(b), is a hazardous waste if it exhibits any of the characteristics identified in this section.

(2) A hazardous waste which is identified by a characteristic in this section, is assigned every EPA Hazardous Waste Number that is applicable as set forth in this section. This number shall be used in complying with the notification requirements of section 3010 of RCRA and all applicable recordkeeping and reporting requirements under R315-3 through R315-8, and R315-13.

(3) For purposes of this section, the Executive Secretary will consider a sample obtained using any of the applicable sampling methods specified in R315-50-6, or an equivalent method, to be a representative sample.

(b) CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE.

(1) The Board shall identify and define a characteristic of hazardous waste in this section only upon determining that:

(i) A solid waste that exhibits the characteristic may:

(A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(ii) The characteristic can be:

(A) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or

(B) Reasonably detected by generators of solid waste through their knowledge of their waste.

(c) CRITERIA FOR LISTING HAZARDOUS WASTE.

(1) The Board shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in this section.

(ii) It has been found to be fatal to humans in low doses, or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity, rat, of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity, rat, of less than 50 milligrams per liter, or a dermal LD 50 toxicity, rabbit, of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible illness. Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.

(iii) It contains any of the toxic constituents listed in R315-50-10 and, after considering the following factors, the Board concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(A) The nature of the toxicity presented by the constituent.

(B) The concentration of the constituent in the waste.

(C) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in paragraph (c)(1)(iii)(G) of this section.

(D) The persistence of the constituent or any toxic degradation product of the constituent.

(E) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-

harmful constituents and the rate of degradation.

(F) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(G) The plausible types of improper management to which the waste could be subjected.

(H) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(I) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(J) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(K) Other factors as may be appropriate.

Substances will be listed on R315-50-10 only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. Wastes listed in accordance with these criteria will be designated Toxic wastes.

(2) The Board may list classes or types of solid waste as hazardous waste if they have reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in Section 19-6-102 of the Utah Solid and Hazardous Waste Act.

(3) The Board will use the criteria for listing specified in this section to establish the exclusion limits referred to in 40 CFR 261.5(c). R315-2-5 incorporates by reference the requirements of 40 CFR 261.5 concerning conditionally exempt small quantity generators.

(d) CHARACTERISTIC OF IGNITABILITY

(1) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(i) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60 degrees C, 140 degrees F, as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79, or D-93-80, incorporated by reference, see section R315-1-2, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78, incorporated by reference, see section R315-1-2, or as determined by an equivalent test method approved under the procedures set forth in section R315-2-15.

(ii) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(iii) It is an ignitable "compressed gas" as defined in 49 CFR 173.300(a), 1990 ed., which is adopted and incorporated by reference, and as determined by the test methods described in that regulation or equivalent test methods approved under section R315-2-15.

(iv) It is an "oxidizer" as defined in 49 CFR 173.151, 1990 ed., which is adopted and incorporated by reference.

(2) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

(e) CHARACTERISTIC OF CORROSIVITY

(1) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(i) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(ii) It is a liquid and corrodes steel, SAE 1020, at a rate greater than 6.35 mm, 0.250 inch, per year at a test temperature of 55 degrees C, 130 degrees F, as determined by the test method specified in NACE, National Association of Corrosion Engineers Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(2) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

(f) CHARACTERISTIC OF REACTIVITY

(1) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(i) It is normally unstable and readily undergoes violent change without detonating.

(ii) It reacts violently with water.

(iii) It forms potentially explosive mixtures with water.

(iv) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(v) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(vi) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(vii) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(viii) It is a "forbidden explosive" as defined in 49 CFR 173.5 ed., or a "Class 1 explosive" as defined in 49 CFR 173.50(b)(1), (2), or (3), which are incorporated by reference.

(2) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

(g) TOXICITY CHARACTERISTIC

(1) A solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 of 40 CFR 261.24 at a concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purposes of this paragraph.

(2) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table 1 of 40 CFR 261.24, which corresponds to the toxic contaminant causing it to be hazardous. Table 1 of 40 CFR 261.24, 1990

ed., is adopted and incorporated by reference.

R315-2-10. Lists of Hazardous Wastes.

(a) A solid waste is a hazardous waste if it is listed in this section or R315-2-11, unless it has been excluded from this list under section R315-2-16.

(b) The Board will indicate the basis for listing the classes or types of wastes listed in this section and R315-2-11 by employing one or more of the following Hazard Codes:

Ignitable Waste: (I)

Corrosive Waste: (C)

Reactive Waste: (R)

Toxicity Characteristic Waste: (E)

Acute Hazardous Waste: (H)

Toxic Waste: (T)

R315-50-9, which incorporates by reference 40 CFR 261, Appendix VII, identifies the constituent which caused the Board to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in this section and R315-2-11.

(c) Each hazardous waste listed in this section and R315-2-11, is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used to comply with these rules where description and identification of a hazardous waste is required.

(d) The following hazardous wastes listed in this section are subject to the exclusion limits for acutely hazardous wastes established in R315-2-4:

EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

(e) The listing of hazardous wastes from non-specific sources found in 40 CFR 261.31, 2000 ed., is adopted and incorporated by reference with the following additional waste:

(1) F999 - Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX. (R,T,C,H)

(f) The listing of hazardous wastes from specific sources found in 40 CFR 261.32, 2000 ed., is adopted and incorporated by reference.

R315-2-11. Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in R315-2-11" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Where a manufacturing process waste is deemed to be hazardous waste because it contains a substance listed in paragraphs (e) or (f) of this section, that waste will be listed in Section R315-2-10, which incorporates the lists of hazardous wastes in 40 CFR 261.31 and 261.32, or will be identified as a hazardous waste by the characteristics set forth in Section R315-2-9.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Subsection R315-2-2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as, or a component of a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, unless the container is empty as defined in R315-2-7(b). Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a discharge, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated,

stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to the drum reconditioner who reconditions the drum but discards the residue.

(e) The listing of chemicals, found in 40 CFR 261.33(e), 1997 ed., is adopted and incorporated by reference, with the addition of the following waste:

(1) P999 Nerve, Military, and Chemical Agents (i.e., CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.)

(f) The listing of chemicals, found in 40 CFR 261.33(f), 1998 ed., is adopted and incorporated by reference.

R315-2-12. Inspections.

Any duly authorized officer, employee or representative of the Department or the Board may, at any reasonable time and upon presentation of appropriate credentials and upon providing the opportunity to have a representative of the owner, operator, or agent in charge to be present, enter upon and inspect any property, premise, or place on or at which hazardous wastes are generated, transported, stored, treated or disposed of, and may have access to and the right to copy any records relating to these wastes for the purpose of ascertaining the compliance with R315-1 through R315-101. Those persons referred to in this section may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

R315-2-13. Variances Authorized.

(a) Variances will be granted by the Board only to the extent allowed under Federal law.

(b) The Board may consider a variance request in accordance with the statutory standard of 19-6-111. No variance shall be granted except upon application for it. Immediately upon receipt of an application for a variance, the Board shall give public notice of the application and provide for an opportunity for a public hearing. A variance granted for more than one year shall contain a timetable for coming into compliance with these regulations and shall be conditioned on adherence to that timetable.

(c) Any variance granted under this section may be renewed on terms and conditions and for periods which would be appropriate for the initial granting of a variance. No renewal shall be granted except on application for it. Immediately upon receipt of an application for renewal, the Board shall give public notice of the application and provide for an opportunity for a public hearing.

(d) The Board may, at its own instance, review any variance granted during the term for which a variance was granted. The procedure for this review shall be the same as that for an original application and the variance previously granted may be revoked upon a finding that the conditions and the terms upon which the variance was granted are not being met.

(e) Any variance or renewal shall exist at the discretion of the Board and shall not constitute a right of the applicant or holder. However, any person adversely affected by the granting, denial or revocation of any variance or renewal by the Board may obtain judicial review of the Board's decision by filing a petition in District Court within 30 days from the date of notification of the decision.

R315-2-14. Violations, Orders, and Hearings.

(a) Whenever the Board or its duly appointed representative, as expressly delegated by the Board, determines that any person is in violation of any applicable approved hazardous waste operation plan or the requirements of R315-1 through R315-101, the Board or its duly appointed representative may cause written notice of that violation to be served upon the alleged violators. That notice shall specify the provisions of the plan, the rules alleged to have been violated, and the facts alleged to constitute the violation. The Board or its duly appointed representative may issue an order that necessary corrective action be taken within a reasonable time or may request the attorney general or the county attorney in the county in which the violation takes place to bring a civil action for injunctive relief and enforcement of R315-1 through R315-101.

(b) Any order issued pursuant to 19-6-112 and R315-2-14(a) shall become final unless, within 30 days after the order is served, the persons specified therein request a hearing. The request shall:

(1) be in writing;

(2) be addressed to the Executive Secretary;

(3) include the order number;

(4) state the facts;

(5) state the relief sought; and

(6) state the reasons the relief requested should be granted.

(c) Utah Administrative Procedures Act, 63-46b, and R315-12, shall govern the conduct of hearings before the Board.

R315-2-15. Petitions for Equivalent Testing or Analytical Methods.

(a) Any person seeking to add a testing or analytical method to R315-2, R315-7, R315-8, or R315-50, which incorporates the testing and analytical methods of 40 CFR 261, may petition for a regulatory amendment under this section and R315-2-17. To be successful, the person shall demonstrate to the satisfaction of the Board that the proposed method is equal to or superior to the corresponding method prescribed in R315-2, R315-7, R315-8, or R315-50, in terms of its sensitivity, accuracy, and precision, i.e., reproducibility.

(b) Each petition shall include:

(1) The petitioner's name and address;

(2) A statement of the petitioner's interest in the proposed action;

(3) A description of the proposed action, including, where

appropriate, suggested regulatory language;

(4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information;

(5) A full description of the proposed method, including all procedural steps and equipment used in the method;

(6) A description of the types of wastes or waste matrices for which the proposed method may be used;

(7) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in R315-2, R315-7, R315-8, and R315-50;

(8) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(9) A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

(c) After receiving a petition for an equivalent method, the Board may request any additional information on the proposed method which it may reasonably require to evaluate the method.

(d) The Board will consider any petitions in accordance with rulemaking procedures outlined in Section 63-46a-12.

(e) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.21 to have an alternative analytical method approved by EPA. In the event approval is granted, the petitioner shall so notify the Board and the decision of EPA will be binding upon the Board.

R315-2-16. Petitions to Amend This Rule to Exclude a Waste Produced at a Particular Facility.

(a) The requirements of 40 CFR 260.22, 1993 ed., as amended by 58 FR 46040, August 31, 1993, regarding petitions to exclude a waste are adopted and incorporated by reference with the following amendments:

(1) Substitute "Board" for "Administrator;"

(2) Include the following paragraphs:

(i) The Board will consider any petitions in accordance with rulemaking procedures outlined in Title 63, Chapter 46a, and in accordance with the procedures outlined in the Utah Administrative Procedures Act, Title 63, Chapter 46b, and Rule R315-12.

(ii) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.22 to have a particular waste delisted by EPA. In the event delisting is granted, the petitioner shall so notify the Board and the decision of EPA will be binding upon the Board unless, within 30 days after such notification, the Board specifically overrules the decision of EPA. In such event, the petitioner may petition the Board directly under this section for the relief sought.

R315-2-17. Petition to Amend Rules.

(a) It is the intent of the Board to insure the compatibility and equivalency of R315-1 through R315-101 with the regulations promulgated by EPA under the Resource Conservation and Recovery Act of 1976.

(b) Any person may petition the Board to modify or revoke any provision in R315-1 through R315-16, R315-50, R315-101, and R315-102. A petition shall be considered under the procedures outlined in 63-46a-12 and R15-2.

R315-2-18. Variances from Classification as a Solid Waste.

The variances from classification as a solid waste of 40 CFR 260.30, 1994 ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-19. Standards and Criteria for Variances from Classification as a Solid Waste.

(a) The standards and criteria for variances from classification as a solid waste found in 40 CFR 260.31, 1994 ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

(1) Substitute "Board" for "Regional Administrator."

R315-2-20. Variance to be Classified as a Boiler.

The provision for a variance to be classified as a boiler as found in 40 CFR 260.32, 1994 ed., as amended by 59 FR 47982, September 19, 1994, is adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-21. Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler.

The procedures for variances from classification as a solid waste or boiler of 40 CFR 260.33, ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis.

The provision regarding the regulation of certain hazardous waste recycling activities of 40 CFR 260.40, 1990 ed., is adopted and incorporated by reference with the following amendment:

Substitute "Executive Secretary" for "Regional Administrator."

R315-2-23. Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities.

The Executive Secretary shall use the following procedures when determining whether to regulate hazardous waste recycling activities described in R315-2-6, which incorporates by reference the requirements of 40 CFR 261.6 regarding recyclable materials, under the provisions of 40 CFR 261.6 (b) and (c), rather than under the provisions of 40 CFR 266.70 concerning precious metals recovery.

(a) If a generator is accumulating the waste, the Executive Secretary will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of R315-5. The notice will become final within 30 days, unless the person served requests a public hearing before the Board to challenge the decision. Upon receiving such a request, the Board will hold a hearing. The Board will provide notice of the hearing to the public and allow public participation at the hearing. The Board will issue a final order after the hearing stating whether or not compliance with

R315-5 is required. The order becomes effective 30 days after service of the decision unless the Board specifies a later date.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a hazardous waste operation permit in accordance with all applicable provisions of R315-3. The owner or operator of the facility must apply for a hazardous waste operation plan approval within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Board's decision, he may do so in his hazardous waste operation plan, in a public hearing held on the draft plan approval, or in comments filed on the draft hazardous waste operation plan approval, or on the notice of intent to deny the hazardous waste operation plan. The fact sheet accompanying the hazardous waste operation plan approval will specify the reasons for the Board's determination. The question of whether the Board's decision was proper will remain open for consideration during the public comment period discussed under R315-4-1.11 and in any subsequent hearing.

R315-2-24. Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement.

(a) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of paragraphs (b) and (c) of this section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

(b) Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(1) Generators shall do one of the following:

(i) Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;

(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or

(iii) Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservations.

(2) Cleaning Requirements.

(i) Prepare and sign a written equipment cleaning plan that describes:

(A) The equipment to be cleaned;

(B) How the equipment will be cleaned;

(C) The solvent to be used in cleaning;

(D) How solvent rinses will be tested; and

(E) How cleaning residues will be disposed.

(ii) Equipment must be cleaned as follows:

(A) Remove all visible residues from process equipment;

(B) Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

(iii) Analytical requirements.

(A) Rinses must be tested in accordance with SW-846, Method 8290.

(B) "Not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1.

(iv) The generator must manage all residues from the cleaning process as F032 waste.

(3) Replacement requirements.

(i) Prepare and sign a written equipment replacement plan that describes:

(A) The equipment to be replaced;

(B) How the equipment will be replaced; and

(C) How the equipment will be disposed.

(ii) The generator must manage the discarded equipment as F032 waste.

(4) Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

(c) The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

(1) The name and address of the facility;

(2) Formulations previously used and the date on which their use ceased in each process at the plant;

(3) Formulations currently used in each process at the plant;

(4) The equipment cleaning or replacement plan;

(5) The name and address of any persons who conducted the cleaning and replacement;

(6) The dates on which cleaning and replacement were accomplished;

(7) The dates of sampling and testing;

(8) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

(9) A description of the tests performed, the date the tests were performed, and the results of the tests;

(10) The name and model numbers of the instrument(s) used in performing the tests;

(11) QA/QC documentation; and

(12) The following statement signed by the generator or his authorized representative:

I certify under penalty of law that all process equipment required to be cleaned or replaced under 40 CFR 261.35 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

R315-2-25. Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under R315-3 through R315-14 of these rules except as specified in section R315-16 of these rules and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under R315-16:

(a) Batteries as described in R315-16-1.2;

(b) Pesticides as described in R315-16-1.3;

(c) Mercury thermostats as described in R315-16-1.4; and

(d) Mercury lamps as described in R315-16-1.6.

R315-2-26. Comparable/Syngas Fuel Exclusion.

The requirements of 40 CFR 261.38, 2000 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for all references made to "Director".

KEY: hazardous waste
September 4, 2001 19-6-105
Notice of Continuation March 12, 1997 19-6-106

R315. Environmental Quality, Solid and Hazardous Waste.
R315-101. Cleanup Action and Risk-Based Closure Standards.
R315-101-1. Purpose, Applicability.

(a) Purpose. R315-101 establishes information requirements to support risk-based cleanup and closure standards at sites for which remediation or removal of hazardous constituents to background levels will not be achieved. The procedures in this rule also provide for continued management of sites for which minimal risk-based standards cannot be met.

(b) Applicability.

(1) R315-101 is applicable to any responsible party involved in management of a site contaminated with hazardous waste or hazardous constituents. This rule does not apply to a site that has been or will be cleaned to background.

(2) In the event of a release of hazardous waste or material which, when released, becomes hazardous waste, these requirements apply if the responsible party fails to clean up all the released material and any residue or contaminated soil, water or other material resulting from the release as required by R315-9-3. If the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of less than or equal to one for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Executive Secretary determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), the requirements of R315-9-3 shall be considered met.

(3) The owner or operator of a hazardous waste management facility or a facility subject to interim status requirements shall meet the requirements of R315-7-14 and R315-8-7 prior to implementation of any activities described in R315-101. The requirements of R315-3-1.1(e)(5) and (6) shall be met for a hazardous waste management unit if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of less than or equal to one for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Executive Secretary determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). If these risk exposure criteria are met, a request for a risk-based closure may be submitted to the Executive Secretary for review.

(4) If the risk present at the site is greater than the exposure limit as defined in R315-101-1(b)(2) or (3) or the Executive Secretary determines that ecological effects may be significant, then a risk-based closure will not be granted and appropriate management will be required and may include corrective action, post-closure care, monitoring, deed restrictions, and security of the site. For determinations of appropriate corrective action or management activities at a site, the following criteria shall be considered in order of importance:

(a) The impact or potential impact of the contamination on the human health;

(b) The impact or potential impact of the contamination on the environment;

(c) The technologies available for use in clean-up; and

(d) Economic considerations and cost-effectiveness of clean-up options.

R315-101-2. Stabilization.

The responsible party must immediately take appropriate action to stabilize the site either through source removal or source control. After the responsible party has attempted to complete the requirements of R315-9 and the Executive Secretary determines that additional work is needed to stabilize the site, the Executive Secretary will notify the responsible party that additional work is necessary and provide the responsible party with objectives to be addressed in developing a work plan to further stabilize the site. The work plan shall be submitted to the Executive Secretary for review and approval within fifteen days of receiving notification that additional work will be necessary to complete the emergency actions required by R315-9. Work plans shall be of a scope commensurate with the work to be performed and site-specific characteristics. This work plan shall include a description of the interim measure and how it will meet the criteria of source removal or source control. The implementation of the work plan shall be according to the schedule contained within the approved plan. All interim measures shall be at the expense of the party responsible for the site. If the party responsible for the site fails to take the measures required for stabilizing the site, the Executive Secretary may request the Executive Director of the Department to take abatement and cost recovery actions as provided in Section 19-6-301, et seq., Utah Hazardous Substances Mitigation Act.

R315-101-3. Principle of Non-degradation.

When closing or managing a contaminated site, the responsible party shall not allow levels of contamination in groundwater, surface water, soils, and air to increase beyond the existing levels of contamination at a site when site management commences. The responsible party will demonstrate compliance with this policy by submitting appropriate monitoring data or other data as may be required by the Executive Secretary. If at any time the level of contamination increases, the responsible party shall take immediate corrective action to prevent further degradation of any medium.

R315-101-4. Site Characterization.

The following information shall be collected to characterize the site, and define site boundaries and Area(s) of Contamination:

(a) A legal description of the site;

(b) Historical land use and ownership of the site;

(c) Topographical map(s) of sufficient detail, scale, and accuracy to depict and locate all past and current physical structures including all building(s) and waste activities at the site;

(d) Information and maps of sufficient detail, scale, and accuracy to describe regional, local, and site geology, surface water, and hydrogeological conditions;

(e) An inventory of all current and past wastestreams managed at the site, including process descriptions and suspected contamination source information;

(f) Background levels of suspected hazardous constituents based on the inventory as determined in R315-101-4(e) in media of concern, e.g. sediments, soil, groundwater, surface water, and air which are representative of the site; and

(g) Location and boundaries of all Area(s) of Contamination, including concentrations, types and extent of hazardous constituents. Media to be sampled may include sediments, soil, groundwater, surface water, and air, as applicable.

R315-101-5. Health Evaluation Criteria, Risk Assessment.

5.1 REQUIRED STUDY

(a) When conducting the risk assessment the responsible party will use all applicable site characterization data and shall consider the following parameters when conducting the risk assessment:

(1) Identification, concentration, and distribution of all suspected hazardous constituents identified in R315-101-4(e);

(2) All area(s) of contamination at the site;

(3) Fate of contaminants and pathways of contaminant transport; and

(4) Potentially exposed populations.

5.2 CHARACTERIZATION AND EVALUATION OF RISK

(a) The responsible party shall conduct a risk assessment which includes the following:

(1) The concentration term "C" for each medium for each hazardous constituent identified in R315-101-5.1(a)(1);

(2) Evaluation of the fate of contaminants and of all pathways of contaminant transport identified in R315-101-5.1(a)(3);

(3) Exposure assessment identifying the RME for all exposure pathways, intakes, and identified constituents;

(4) Current toxicity information for carcinogenic and noncarcinogenic effects;

(5) Risk characterization identifying carcinogenic risk, individual and multiple substances, and noncarcinogenic hazardous index, individual and multiple substances;

(6) An ecological evaluation which provides for terrestrial and aquatic processes; and

(7) Current toxicity information for all the constituents and biological processes relevant to the ecological evaluation.

(b) The risk assessment shall be conducted using one or both of the standard exposure scenarios listed below, as needed to determine site management options:

(1) Residential. This exposure scenario includes ingestion of water (must include surface water and ground water regardless of water quality), ingestion of soil and dust, ingestion of contaminated and potentially contaminated food, inhalation of contaminants, dermal contact with chemicals in soil, and dermal contact with chemicals in water for a human being ages zero through 70 years old using the equations and default variable values found in the Risk Assessment Guidance for Superfund, Volume 1: Human Health Evaluation Manual Supplemental Guidance, "Standard Default Exposure Factors", Interim Final, OSWER Directive 9285.6-03, March 25, 1991 or most recent edition;

(2) Actual land use conditions or potential land use conditions based upon applicable zoning and future land use planning considerations, if potential land use conditions offer a more protective exposure scenario than actual land use conditions. This exposure scenario involves an assessment based on actual site conditions using standard default variable values. The potential land use exposure scenario should include a conceptual model including current site conditions, expected future conditions based upon site-specific physical and chemical information, and the assumption that contaminated media will not have undergone any remedial engineering.

5.3 DATA PRESENTATION

(a) A risk assessment report shall be submitted to the Executive Secretary and must include at a minimum the following:

(1) An executive summary;

(2) An overview of the site and the areas of contamination;

(3) A site characterization report which includes:

(i) Maps of sufficient detail and accuracy to depict areas of contamination, topography, geology, and groundwater contours or potentiometric surface;

(ii) Site and regional geological and hydrological descriptions;

(iii) A detailed discussion of areas of contamination;

(iv) Background levels of hazardous constituents including details of statistical methods used to determine background; and

(v) Descriptions of releases of hazardous constituents and expected extent of migration from the area of contamination.

(4) Identification and concentration of hazardous constituents identified in R315-101-5.1(a)(1). A sampling and analysis plan shall be prepared and utilized for the collection of all data. This plan shall be developed using procedures and methods outlined in R315-50-6 and the most current version of "SW-846, Test Methods for Evaluating Solid Waste." It shall contain a summary outlining data quality objectives, completed analytical request forms for all analysis performed, dry weight equivalents, sampling location identification and justification, standard operating procedures used for data collection, all statistical analysis performed, quality assurance and quality control plans (QA/QC plan) and QA/QC results, instrument calibration results, and analytical methods including constituent detection limits;

(5) Exposure assessment identifying exposure levels for all exposure pathways identified in R315-101-5.2(a)(3). If fate and transport models are used, the users manual, model theory, computer software for the model, installation verification data set for the model and parametric analysis of the input parameters must be provided upon request of the Executive Secretary;

(6) Identification of toxicity information gathered for all identified hazardous constituents for carcinogenic, slope factors and weight-of-evidence classification, noncarcinogenic effects, chronic reference doses (RfDs) and critical effects associated with RfDs from, in order of preference, the Integrated Risk Information System (IRIS), Health Effects Assessment Summary Tables (HEAST), Agency for Toxic Substances and Disease Registry (ATSDR) toxicological profiles, Environmental Criteria and Assessment Office (ECAO), or other scientifically accepted listings. The source and date of the toxicological information must be identified and be acceptable to the Executive Secretary;

(7) The risk characterization identifying carcinogenic risk, individual and multiple substances, noncarcinogenic hazardous index, individual and multiple substances, chronic hazard quotient, subchronic hazard quotient, uncertainties, and a tabulation of all risk characterization data presented in a format

approved by the Executive Secretary; and

(8) Unless justification is provided to the Executive Secretary, and a waiver of this requirement is granted by the Executive Secretary in writing, an ecological assessment of the site which contains at least the following:

(i) An inventory of the current biological community;

(ii) Estimates of ecological effects based on a subset of ecological endpoints;

(iii) The magnitude and variation of toxic effects; and

(iv) Identification of extent of effects, specifically from the presence of hazardous waste.

(b) If the risk assessment report does not contain all required information of sufficient quality and detail, the Executive Secretary will notify the responsible party in writing of the deficiencies and require resubmittal of the report in a designated time frame.

(c) If the risk assessment report contains all required information of sufficient quality and detail, the Executive Secretary will approve the risk assessment report in writing.

R315-101-6. Risk Management: Site Management Plan and Closure Equivalency.

(a) A site management plan which is supported by the findings in the approved risk assessment report shall be submitted to the Executive Secretary within 60 days of approval of the risk assessment report. This plan may be submitted along with the risk assessment report and must include a schedule for implementation.

(b) The Executive Secretary shall review and approve or disapprove of the conclusions of the proposed site management plan. If the Executive Secretary finds that the site management plan is not adequate for protection of human health and the environment, the responsible party shall then submit a revised site management plan addressing the comments of the Executive Secretary within an appropriate time frame as specified by the Executive Secretary. The Executive Secretary shall review and approve or reject the revised site management plan. Upon draft approval of the site management plan, the Executive Secretary shall follow the requirements of R315-101-7 prior to issuance of final approval. The approved site management plan shall be implemented according to the approved schedule. If the Executive Secretary rejects this revised site management plan, the revised plan will be considered deficient for the reasons specified by the Executive Secretary in a statement of disapproval.

(c)(1) The site management plan may contain a no further action option only if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of "less than or equal to one" for non-carcinogens based on the approved assessment conducted in accordance with R315-101-5.2(b)(1) and the Executive Secretary determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8);

(2) The requirements of R315-3-1.1(e)(5) and (6) shall be deemed met for a hazardous waste management unit if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of "less than or equal to one" for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Executive Secretary determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). If this risk exposure criterion is met, a request for a risk-based closure may be submitted; or

(3) If the risk present at the site is greater than or equal to 1×10^{-6} for carcinogens or a Hazard Index of "greater than one" for non-carcinogens based upon the exposure assessment conducted in accordance with R315-101-5.2(b)(1), or the Executive Secretary determines that ecological effects may be significant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), a risk-based closure will not be granted. The responsible party shall then submit a site management plan fulfilling the requirements of R315-101-6(d) or (e) as applicable.

(d) If the level of risk present at the site is less than 1×10^{-4} for carcinogens and a hazard index is "less than or equal to one" for the risk assessment conducted in accordance with R315-101-5.2(b)(2) but greater than or equal to 1×10^{-6} for carcinogens or a hazard index is greater than one for a risk assessment conducted in accordance with R315-101-5.2(b)(1) or the Executive Secretary determines that ecological effects may be significant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), the site management plan may contain, but is not required to contain, procedures for corrective action. The site management plan shall contain appropriate management activities e.g., monitoring, deed notations, site security, or post-closure care, as determined on a case-by-case basis in accordance with criteria identified in R315-101-1(b)(4).

(e) The site management plan must contain procedures for corrective action if the level of risk present at the site is greater than or equal to 1×10^{-4} for carcinogens or a Hazard Index of "greater than one" for non-carcinogens based on the approved assessment conducted in accordance with R315-101-5.2(b)(2) or the Executive Secretary concludes that corrective action is required to mitigate ecological effects based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). For determination of appropriate corrective action the criteria identified in R315-101-1(b)(4) shall be considered.

(f) If hazardous constituents are present only in groundwater at the site, and if the hazardous constituents are listed in Table 1 of R315-8-6.5, the Maximum Concentration Levels listed in Table 1 can be presented in lieu of health risk estimates for those constituents. The RME for Table 1 constituents must be determined in accordance with approved site characterization methods listed in R315-101-4.

R315-101-7. Public Participation.

(a) The Executive Secretary may provide for public participation in all phases of the cleanup action process, as defined in R315-101-4 through R315-101-6. As directed by the Executive Secretary and based on the circumstances and level of public interest at the site, pertinent work plans shall describe how information will be made available to the public through, for example, fact sheets or information repositories and, where appropriate, contain proposed time frames for public input through, for example, public meetings, hearings, or comment periods. The Executive Secretary shall also provide public notice, a public comment period, and public hearing(s) for the

site management plan in accordance with R315-4-1.10 through R315-4-1.12 and R315-4-1.17.

R315-101-8. Cleanup/Management Action.

(a) Upon approval of the site management plan by the Executive Secretary, all remedial activities at the site shall proceed according to the schedule established in the approved site management plan using the method(s) described therein.

(b) Cleanup/Management Report. The Cleanup/Management Report shall detail remediation, treatment, and monitoring activities undertaken at the site by the responsible party as required by the approved site management plan. If the Cleanup/Management Report provides analytical data as evidence that levels of contamination at the site meet the requirements established in the site management plan for a risk-based closure or no further action as defined in R315-101-6(c)(2), the responsible party shall submit a certification of completion as outlined in R315-101-8(c), or request risk-based closure as outlined in R315-3-1.1(e)(6), whichever is applicable.

(c) Certification of Completion. Within 60 days of the completion of all activities documented in the Cleanup/Management Report, a Certification of Completion of Cleanup/Management Action shall be submitted to the Executive Secretary by registered mail. The certification of completion shall state the site has been managed in accordance with the specifications in the approved Site Management Plan and shall be signed by the responsible party and by an independent Utah registered professional engineer.

(d) Oversight.

(1) The Executive Secretary or his representatives shall have access to the site as described in R315-2-12 and at all times when activity pursuant to R315-101 is taking place. The Executive Secretary or his representatives may take samples or make records of any visit to the site by photographic, electronic, videotape or any other reasonable means.

(2) The Executive Secretary shall bill the responsible party for review of plans submitted to meet the requirements of this Rule.

(3) The responsible party shall notify the Executive Secretary at least seven days prior to any sampling event or remediation activity.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-305. Class IV Landfill Requirements.
R315-305-1. Applicability.

(1) These standards apply to each facility that landfills only:

(a) inert waste, construction/demolition waste, yard waste, dead animals; or

(b) upon meeting the requirements of Section 19-6-804 and Subsections R315-320-3(1) or (2), waste tires and material derived from waste tires.

(2) Inert waste used as road building material and fill material are excluded from the requirements of Rule R315-305.

(3) The location, design, and operation standards of Rule R315-305 become effective January 1, 1998 on each Class IV Landfill.

(4) The ground water monitoring standards of Rule R315-305 become effective July 1, 1998 on each Class IV Landfill that is required to monitor the ground water.

R315-305-2. Class IV Landfill Standards for Performance.

Each Class IV Landfill shall meet the landfill standards for performance as specified in Section R315-303-2.

R315-305-3. Definitions.

Terms used in Rule R315-305 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-305, the following definitions apply.

(1) "Class IVa Landfill" means a Class IV Landfill that receives, based on an annual average, over 20 tons of waste per day and may receive, as a component of construction/demolition waste, conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5.

(2) "Class IVb Landfill" means a Class IV Landfill that receives, based on an annual average, 20 tons, or less, of waste per day or demonstrates that no conditionally exempt small quantity generator hazardous waste is accepted.

(3) "Existing Class IV Landfill" means a Class IV Landfill that was receiving waste on or before January 1, 1998.

(4) "New Class IV Landfill" means a Class IV Landfill that begins receiving waste after January 1, 1998.

R315-305-4. General Requirements.

(1) Location Standards.

(a) A new Class IV Landfill or a lateral expansion of an existing Class IV Landfill shall be subject to the following location standards:

(i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);

(ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d); and

(iii) the landfill shall be located so that the lowest level of waste is at least five feet above the historical high level of ground water.

(b) An existing Class IV Landfill shall not be subject to the location standards of Subsection R315-305-4(1)(a).

(2) An owner or operator of a Class IV Landfill shall obtain a permit, as set forth in Rule R315-310.

(3) An owner or operator of a Class IV Landfill shall design and operate the landfill to:

(a) prevent the run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(b) collect and treat, if necessary, the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(4) An owner or operator of a Class IVa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.

(5) An owner or operator of a Class IV Landfill shall erect a sign at the facility entrance as specified in Subsection R315-303-3(6)(d).

(6) An owner or operator of a Class IV Landfill shall maintain the applicable records as specified in Subsection R315-302-2(3).

(7) An owner or operator of a Class IV Landfill shall meet the requirements of Subsection R315-302-2(6) and make the required recording with the county recorder.

R315-305-5. Requirements for Operation.

(1) The owner or operator of a Class IV Landfill shall not accept any other form of waste except construction/demolition waste, yard waste, inert waste, dead animals, or upon meeting the requirements of Section 19-6-804 and Subsections R315-320-3(1) or (2), waste tires and material derived from waste tires.

(2) The owner or operator of a Class IV Landfill shall prevent the disposal of unauthorized waste by ensuring that at least one person is on site during hours of operation and shall prevent unauthorized disposal during off-hours by controlling entry, i.e., lockable gate or barrier, when the facility is not open.

(3) The owner or operator of a Class IV Landfill shall:

(a) minimize the size of the working face as required by Subsection R315-303-37(g);

(b) employ measures to prevent emission of fugitive dusts, when weather conditions or climate indicate that transport of dust off-site is liable to create a nuisance;

(c) meet the requirements of Subsection R315-303-3(1)(a) and (b) to minimize liquids admitted to the landfill;

(d) collect scattered litter as necessary to avoid a fire hazard or an aesthetic nuisance; and

(e) prohibit scavenging.

(4) The owner or operator of a Class IV Landfill shall cover timbers, wood, and other combustible waste with a minimum of six inches of soil, or equivalent, as needed to avoid a fire hazard.

(5) The owner or operator of a Class IV Landfill shall meet the applicable general requirements of closure and post-closure care of Section R315-302-3 as determined by the Executive Secretary.

(a) The owner or operator of a Class IVa Landfill shall meet the specific closure requirements of Subsection R315-303-3(4).

(b) The owner or operator of a Class IVb Landfill shall close the facility by:

(i) leveling the waste to the extent practicable;

(ii) covering the waste with a minimum of two feet of soil, including six inches of topsoil;

(iii) contouring the cover as specified in Subsection R315-

303-3(4)(a)(iii); and

(iv) seeding the cover with grass, other shallow rooted vegetation, or other native vegetation or covering in another manner approved by the Executive Secretary to minimize erosion.

(v) The Executive Secretary may approve an alternative final cover design for a Class IVb Landfill if it is documented that the alternative final cover provides equivalent protection from infiltration and erosion as the cover specified in Subsection R315-305-5(5)(b).

KEY: solid waste management, waste disposal

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	19-6-109
	40 CFR 257

R386. Health, Epidemiology and Laboratory Services, Epidemiology.

R386-703. Injury Reporting Rule.

R386-703-1. Purpose Statement.

(1) The Injury Reporting Rule is adopted under authority of Sections 26-1-30 and 26-6-3.

(2) The Injury Reporting Rule establishes an injury surveillance and reporting system for major injuries occurring in Utah. Injuries constitute a leading cause of death and disability in Utah and, therefore, pose an important risk to public health.

(3) Rule R386-703 is adopted with the intent of identifying causes of major injury which can be reduced or eliminated, thereby reducing morbidity and mortality.

R386-703-2. Injury Definition.

(1) Injury is defined as bodily damage resulting from exposure to physical agents such as mechanical energy, thermal energy, ionizing radiation, or chemicals, or resulting from the deprivation of basic environmental requirements such as oxygen or heat. Mechanical energy injuries include acceleration and deceleration injuries, blunt trauma, and penetrating wound injuries.

R386-703-3. Reportable Injuries.

(1) The Utah Department of Health declares the following injuries to be of concern to the public's health. Each case shall be reported to the Utah Department of Health as described in R386-703-4.

(a) Acute traumatic brain injury. Reportable acute traumatic brain injuries include head injuries of sufficient severity to cause death or to require admission to a hospital. Acute traumatic brain injuries may be associated with transient or persistent neurological dysfunction, and may be diagnosed as brain concussions, brain contusions, or traumatic intracranial hemorrhages.

(b) Acute spinal cord injury. Reportable acute spinal cord injuries include traumatic injuries to the contents of the spinal canal, spinal cord or cauda equina, which result in death or which result in transient or persistent neurological dysfunction of sufficient severity to require hospital admission.

(c) Blunt force injury. Reportable injuries include all blunt force injuries which result in death or which are of sufficient severity to require hospital admission.

(d) Drowning and near drowning. Reportable drownings and near drownings include all water immersion injuries resulting in death and other water immersion injuries of sufficient severity to require hospital admission.

(e) Asphyxiation. Reportable asphyxiations include injuries which arise from atmospheric oxygen deprivation or from traumatic respiratory obstruction which result in death or which are of sufficient severity to require hospital admission.

(f) Burns. Reportable burn injuries include injuries resulting from acute thermal exposure or exposure to fire which result in death or which are of sufficient severity to require hospital admission.

(g) Electrocution. Reportable electrocution injuries include injuries arising from exposure to electricity which result in death or which are of sufficient severity to require hospital admission.

(h) Elevated Blood Lead. Reportable cases of elevated blood lead levels include all persons with whole blood lead concentrations equal to or greater than 10 micrograms per deciliter.

(i) Chemical Poisoning. Reportable cases of chemical poisoning include all persons with acute exposure to toxic chemical substances which result in death or which require hospital admission or hospital emergency department evaluation. Unintentional adverse health effects resulting from the use of pharmacological agents as prescribed by physicians do not require reporting under this rule.

(j) Intentional Injuries. Reportable intentional injuries include all cases of suicide or attempted suicide resulting in hospital admission and all cases of homicide, attempted homicide, or battery resulting in hospitalization.

(k) Injuries Related to Substance Abuse. Reportable injuries include all cases of injury resulting in death or hospitalization and associated with alcohol or drug intoxication of any person involved in the injury occurrence.

(l) Traumatic Amputations. Reportable amputations include traumatic amputations of a limb or part of a limb which result in death or which require hospital admission or hospital emergency department treatment. Only amputations resulting in bone loss shall be reported.

R386-703-4. Report Requirements.

(1) Case Report Contents. Unless otherwise specified, each injury report shall provide the following information pertaining to the injured person: name, date of birth or age if date of birth is unknown, sex, address of residence, date of injury, type of injury, external cause of injury, locale of injury, intentionality, relation of injury to occupation, disposition of the injured person, and the individual or agency submitting the report. A standard report format has been adopted and shall be supplied to reporting sources by the Department of Health upon request.

(2) Agencies or Individuals Required to Report Injuries. A reportable injury evaluated or treated at a hospital shall be reported by that hospital. Reportable injuries not evaluated at a hospital shall be reported by the involved physician, nurse, other health care practitioner, medical examiner, or laboratory administrator.

(3) Time Requirements. Persons required to report shall submit their reports to the local health department or the Utah Department of Health within 60 days of the time of diagnosis or recognition of injury. In the event of an unusual or excessive occurrence of injuries which may arise from a continuing or immediate threat to the public's health, persons required to report shall immediately report by telephone to the local health officer or to the Utah Department of Health.

(4) Case Report Destinations. Each case of injury shall be reported to the Utah Department of Health or to the local health department responsible for the geographic area where the injury occurred.

(a) The local health officer shall forward all original reports to the Utah Department of Health. Local health departments may maintain copies of these reports.

(b) Except as noted in R386-703-4(c), (d) and (e), case

reports shall be sent to the Bureau of Epidemiology of the Utah Department of Health.

(c) In fatal cases, submission of completed death certificates to the Bureau of Vital Records fulfills reporting requirements.

(d) In cases evaluated in hospital emergency departments, submission of properly completed hospital emergency department logs to the Bureau of Emergency Medical Services will fulfill reporting requirements, provided that the records are submitted through an electronic medium in a computer database format acceptable to the Bureau of Emergency Medical Services.

(e) In cases where reportable injuries listed in R386-703-3 are reported under the requirements of the Utah Health Data Authority Act, 26-33a, the data supplier may notify the Utah Department of Health in writing that information relating to individuals with a reportable injury will be supplied to the Bureau of Epidemiology before the identifying information is removed from the data file. Any data provided in this manner fulfills reporting requirements. If permission is not granted by the data supplier, duplicate reporting is required.

R386-703-5. Special Investigations of Injury.

(1) The Utah Department of Health and local health departments may conduct epidemiologic investigations of injury occurrence. The Utah Department of Health and local health departments may collect additional information pertaining to risk factors, medical condition, and circumstances of injury. Hospitals and other health care providers shall, upon request, provide authorized health personnel the occasion to inspect medical records of reportable injuries. The Utah Department of Transportation, Utah Industrial Commission, Utah Department of Public Safety, and local public safety agencies shall make available to authorized health personnel information on reportable injuries.

R386-703-6. Confidentiality of Reports.

(1) All reports herein required are confidential and are not open to public inspection. The confidentiality of personal information obtained under this rule shall be maintained according to the provisions of Sections 26-6-27 through 26-6-30. Nothing in this rule, however, precludes the discussion of case information with the attending physician or public health workers.

R386-703-7. Penalties.

(1) Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Injury Reporting Rule, are prescribed under Sections 26-23-3 through 26-23-6.

KEY: rules and procedures, injury
January 1, 1997 26-1-30
Notice of Continuation September 18, 2001

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-302. Eligibility Requirements.

R414-302-1. Citizenship and Alienage.

(1) The department adopts 42 CFR 435.406(a)(1), 1997 ed., which is incorporated by reference. The Department adopts Section 1137 and Subsection 1903(v) of the Compilation of the Social Security Laws, in effect January 1, 1998, which is incorporated by reference. The Department adopts Pub. L. 104-193 (401) through (403), (411), (412), (421) through (423), (431), and (435), as amended by Pub. L. 105-33(5302)(b) and (c), (5303), (5305)(b), (5306), (5562), (5563), (5571), and Pub. L. 105-306(2), which are incorporated by reference. The Department adopts Pub. L. 105-33(5307)(a) and (5566) which are incorporated by reference.

(2) The definitions in R414-1 and R414-301 apply to this rule.

(3) The Department shall decide if a public or private organization no longer exists or is unable to meet an alien's needs. The Department shall base the decision on the evidence submitted to support the claim. The documentation submitted by the alien must be sufficient to prove the claim.

(4) One adult household member must declare the citizenship status of all household members who will receive Medicaid. The client must provide verification of citizenship.

(5) A qualified alien, as defined in Pub. L. 104-193 (431) as amended by Pub. L. 105-33(5302)(c)(3), (5562), (5571), and Pub. L. 105-306(2) who was residing in the United States prior to August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services.

(6) A qualified alien, as defined in Pub. L. No. 104-193 (431) as amended by Pub. L. 105-33(5302)(c)(3), (5562), and (5571), newly admitted into the United States on or after August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services after five years have passed from the person's date of entry into the United States.

R414-302-2. Utah Residence.

The Department adopts 42 CFR 435.403, 1997 ed., which is incorporated by reference. The Department adopts Subsection 1902(b) of the Compilation of the Social Security Laws, in effect January 1, 1998, which is incorporated by reference.

R414-302-3. Local Office Residence.

Applicants may apply at any local office or outreach location. The Department may require applicants also applying for services from the Department of Workforce Services or foster care Medicaid to apply at the local office in the area where they reside.

R414-302-4. Residents of Institutions.

(1) The Department adopts 20 CFR 416.201 and 416.211, 1997 ed. and 42 CFR 435.1008, 1997 ed., which are incorporated by reference.

(2) The Department does not consider persons under the age of 18 to be residents of an institution if they are living temporarily in the institution while arrangements are being made for other placement.

(3) The Department does not consider an individual who resides in a temporary shelter for a limited period of time as a resident of an institution.

(4) The Department considers ineligible residents of institutions for mental disease as non-residents while on conditional or convalescent leave from the institution.

R414-302-5. Social Security Numbers.

(1) The Department adopts 42 CFR 435.910, 1997 ed., which is incorporated by reference. The Department adopts Section 1137 of the Compilation of the Social Security Laws, in effect January 1, 1998, which is incorporated by reference.

(2) Clients must provide their correct Social Security Number (SSN).

(a) The Department requires clients to provide their correct SSN or a proof of application for a SSN at the time of application for Medicaid.

(b) The Department requires clients who do not know their SSN or provide a SSN that is questionable to provide proof of application for a SSN upon application for Medicaid.

(c) Acceptable proof of application for a SSN is a Social Security Card, an official document from Social Security which identifies the correct number or a Social Security receipt form 5028, 2880, or 2853.

(d) The Department requires a new proof of application for a SSN at each recertification if the SSN has not been provided previously.

R414-302-6. Application for Other Possible Benefits.

The Department adopts 42 CFR 435.608, 1997 ed., which is incorporated by reference.

R414-302-7. Third Party Liability.

(1) The Department adopts 42 CFR 433.138(b) and 435.610, 1997 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 1998, which are incorporated by reference.

(2) The Department requires clients to report any changes in third party liability information within 30 days.

(3) The Department considers a client noncooperative if the client knowingly withholds third party liability information.

(4) The Department shall decide whether employer provided group health insurance would be cost effective for the state to purchase as a benefit of Medicaid.

(5) The Department requires clients residing in selected communities to be enrolled in a Health Maintenance Organization as their primary care provider. The Department shall enroll clients who do not make a selection in a Health Maintenance Organization that the Department selects. The Department shall notify clients of the Health Maintenance Organization that they will be enrolled in and allowed ten days to contact the Department with a different selection. If the client fails to notify the Department to make a different selection within ten days, the enrollment shall become effective for the next benefit month.

R414-302-8. Medical Support Enforcement.

The Department adopts 42 CFR 433.145 through 433.148, 1997 ed., which is incorporated by reference.

R414-302-9. Relationship Determination for Family Medicaid.

The Department adopts 42 CFR 435.602(a), 1997 ed., which is incorporated by reference.

R414-302-10. Strikers - Family Medicaid.

The Department adopts 45 CFR 233.106, 1997 ed., which is incorporated by reference.

KEY: benefits, income
June 28, 1999 26-18
Notice of Continuation February 6, 1998

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-304. Income and Budgeting.

R414-304-1. Definitions.

The definitions in R414-1 and R414-301 apply to this rule. In addition:

(1) "Allocation for a spouse" means an amount of income that is the difference between the SSI federal benefit rate for a couple minus the federal benefit rate for an individual.

(2) "Basic maintenance standard (BMS)" means the income level for eligibility based on the number of family members who are counted in the medical assistance unit.

(3) "Benefit month" means a month in which an individual is eligible for Medicaid.

(4) "Federal poverty guidelines" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for means tested federal programs.

(5) Household size" means the number of family members, including the client, who are counted based on the criteria of the particular program to decide what level of income to use to determine eligibility.

(6) "Poverty-related program" means a medical assistance program that uses a percentage of the federal poverty guideline for the household size involved to determine eligibility

R414-304-2. A, B and D Medicaid and A, B and D Institutional Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, 416.1163 through 416.1166, and Appendix to Subpart K of 416, 1998 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) and 1612(b)(22) of the Compilation of the Social Security Laws in effect January 1, 1999 which are incorporated by reference. The Department shall not count as income any payments that are prohibited under other federal laws rom being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(a) "Deeming" or "deemed" means a process of counting income from a spouse of an aged, blind, or disabled person or from a parent of a blind or disabled child to decide what amount of income after certain allowable deductions, if any, must be considered income to an aged, blind, or disabled person or child.

(b) "Eligible spouse" means the member of a married couple who is either aged, blind, or disabled.

(c) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(d) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount shall not exceed 1/3 of the SSI payment plus $20.

(3) Only the portion of a VA check to which the client is legally entitled is countable income. VA payments for aid and attendance do not count as income. The portion of a VA payment which is made because of unusual medical expenses is not countable income. Other VA income based on need is countable income, but is not subject to the $20 general income disregard.

(4) The value of special circumstance items is not countable income if the items are paid for by donors.

(5) For A, B and D Medicaid two-thirds of child support received a month is countable unearned income. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind.

(6) For A, B and D Institutional Medicaid court-ordered child support payments must be paid to the Office of Recovery Services (ORS) when the child resides out-of-home in a Medicaid 24-hour care facility. If the child has no income or insufficient income to provide for a personal needs allowance, ORS will allow the parent to retain up to the amount of the personal needs allowance to send to the child for personal needs. All other child support payments received by the child or guardian that are not subject to collection by ORS shall count as unearned to the child.

(7) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(8) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(9) SSA reimbursements of Medicare premiums are not countable income.

(10) Reimbursements of a portion of Medicare premiums made by the state Medicaid agency to an individual eligible for QI-Group 2 coverage are not countable income.

(11) Payments under a contract, retroactive payments from SSI and SSA reimbursements of Medicare premiums are not considered lump sum payments.

(12) Educational loans, grants, and scholarships guaranteed by the U.S. Department of Education are not countable income if the recipient is an undergraduate. Income from service learning programs is not countable income if the recipient is an undergraduate. Deductions are allowed from countable educational income if receipt of the income depends on school attendance and if the client pays the expense. Allowable deductions include:

(a) tuition;

(b) fees;

(c) books;

(d) equipment;

(e) special clothing needed for classes;

(f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount;

(g) child care necessary for school attendance.

(13) Except for an individual eligible for the Medicaid Work Incentive Program, the following provisions apply to non-institutional medical assistance:

(a) For A, B, or D Medicaid, the income of a spouse shall not be considered in determining Medicaid eligibility of a person who receives SSI. SSI recipients who meet all other Medicaid eligibility factors shall be eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind, or disabled person has more income after deductions than the allocation for a spouse, that income shall be deemed to be income to the aged, blind, or disabled spouse to determine eligibility.

(c) The Department shall determine household size and whose income counts for A or D Medicaid as described below.

(i) If only one spouse is aged or disabled:

(A) income of the ineligible spouse shall be deemed to be income to the eligible spouse when it exceeds the allocation for a spouse. The combined income shall then be compared to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the ineligible spouse's income shall not be counted and the ineligible spouse shall not be included in the household size or the BMS. Only the eligible spouse's income shall be compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged or disabled, the income of both spouses is combined and compared to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount, and one spouse receives SSI, only the income of the non-SSI spouse, after allowable deductions, shall be compared to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds the federal poverty guideline, then the income of both spouses, after allowable deductions, shall be compared to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, income of the non-covered spouse shall be deemed to the covered spouse when it exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, then only the covered spouse's income shall be counted. In both cases, the countable income shall be compared to the two-person poverty guideline. If it exceeds the limit, then income shall be compared to the BMS.

(I) If the non-covered spouse has deemable income, the countable income shall be compared to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have deemable income, then only the covered spouse's income shall be compared to a one-person BMS to calculate the spenddown.

(iii) If an aged or disabled person has a spouse who is blind, then income of the blind spouse shall be deemed to the aged or disabled person when this income exceeds the allocation for a spouse to determine eligibility for the poverty-related Aged or Disabled Medicaid programs. If the deemed income of the blind spouse does not exceed the allocation for a spouse, none of the blind spouse's income shall be counted. In either case, countable income shall be compared to the poverty guideline for a two-person household to determine eligibility for the aged or disabled spouse.

(A) If the countable income does not exceed the two-person poverty guideline, then the aged or disabled spouse shall be eligible under the poverty-related Aged or Disabled Medicaid program.

(B) If the countable income exceeds the two-person poverty guideline, then eligibility under the spenddown program shall be determined as described in (ii)(A) if the blind spouse receives SSI or as in (ii)(B)or (ii)(C)(I) or (II) if the blind spouse does not receive SSI.

(d) The Department shall determine household size and whose income counts for B Medicaid as described below.

(i) If the spouse of a blind client is aged, blind, or disabled and does not receive SSI, income of both spouses shall be combined and, after allowable deductions, compared to the BMS for a two-person household to calculate the spenddown.

(A) If only one spouse will be covered, or the aged or disabled spouse is eligible under the A or D poverty-related program, income of the non-covered spouse shall be deemed when it exceeds the allocation for a spouse. The total countable income shall then be compared to the BMS for a two-person household to calculate the spenddown.

(B) If the non-covered spouse's income does not exceed the allocation for a spouse, then only the covered spouse's income shall be counted and compared to the BMS for a one-person household.

(C) If the spouse of a blind client receives SSI, then only the income of the blind spouse shall be compared to the BMS for one.

(ii) If the spouse is not aged, blind, or disabled, income shall be deemed to the blind spouse when it exceeds the allocation for a spouse, and, after allowable deductions, the combined income shall be compared to the BMS for two. If the ineligible spouse's income does not exceed the allocation for a spouse, only the blind spouse's income, after allowable deductions, shall be compared to the BMS for one person to calculate the spenddown.

(e) The Department shall determine household size and whose income counts for QMB, SLMB, and QI assistance as described below.

(i) If both spouses receive Part A Medicare and both want coverage, income shall be combined and compared to the applicable percentage of the poverty guideline for a two-person household. SSI income shall not be counted.

(ii) If one spouse receives Part A Medicare, and the other spouse is aged, blind, or disabled, does not receive Part A Medicare, or does not want coverage, then income of the ineligible spouse shall be deemed to the eligible spouse when it exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse shall be counted. In both cases, the countable income shall be compared to the applicable percentage of the federal poverty guideline for a two-person household.

(f) If any parent in the home receives SSI, the income of neither parent shall be considered to determine a child's eligibility for B or D Medicaid.

(g) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(14) For institutional Medicaid, the Department shall only count the client in the household size and only count the client's income to determine contribution to cost of care.

(15) Interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No. 105-285 effective October 27, 1998 shall not count as income.

R414-304-3. Medicaid Work Incentive Program Unearned Income Provisions.

(1) The Department adopts 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, and Appendix to Subpart K of 416, 1998 ed., which are incorporated by reference. The Department adopts Pub. L. No. 105-33 (4735) enacted August 5, 1997, Pub. L. No. 104-193, Section 103 effective August 22, 1996, and Pub. L. No. 105-285, Section 404-416 effective October 27, 1998 which are incorporated by reference. The Department adopts Pub. L. No. 104-204 (1805)(c) and (d) enacted September 26, 1996 and 105-306 (7)(a) and (c) enacted October 28, 1998 which is incorporated by reference.

(2) The Department shall allow the provisions found in R414-304-2 (3) through (12) and (14).

(3) The income from an ineligible spouse or parent shall be determined by the total of the earned and unearned income using the appropriate exclusions in 416.1161, except that court ordered support payments would not be allowed.

(4) For the Medicaid Work Incentive Program, the income of a spouse or parent shall not be considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other Medicaid Work Incentive Program eligibility factors shall be eligible without paying a Medicaid buy-in premium.

(5) The Department shall determine household size and whose income counts for the Medicaid Work Incentive Program as described below:

(a) If the Medicaid Work Incentive Program individual is an adult and is not living with a spouse, count only the income of the individual. After allowable deductions, the net income shall be compared to 250% of the federal poverty guideline for one person.

(b) If the Medicaid Work Incentive Program individual is living with a spouse, combine their income before allowing any deductions. Include in the household size the spouse and any children under age 18. Also include in the household size any children who are 18, 19, or 20 and are full-time students. Compare the net income of the Medicaid Work Incentive Program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the Medicaid Work Incentive Program individual is a child living with a parent, combine the income of the Medicaid Work Incentive Program individual and the parents before allowing any deductions. Include in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students. Compare the net income of the Medicaid Work Incentive Program individual and their parents to 250% of the federal poverty guideline for the household size involved.

(6) Interest accrued on an Individual Development Account as defined in Sections 404-416 Of Pub. L. No. 105-285 effective October 27, 1998 shall not count as income.

R414-304-4. Family Medicaid and Institutional Family Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(v), 233.20(a)(3)(xxi), 233.20 (4)(ii), and 233.51, 1998 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) of the Compilation of the Social Security Laws in effect January 11, 1999, which is incorporated by reference. The Department shall not count as income any payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(a) A "a bona fide loan" is a loan that has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment.

(b) "Unearned income" means cash received for which the individual performs no service.

(c) "Quarter" means any three month period that includes January through March, April through June, July through September or October through December.

(3) Bona fide loans are not countable income.

(4) Support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services is not countable income.

(5) The value of food stamp assistance is not countable income.

(6) SSI and State Supplemental Payments are income for children receiving Child, Family, Newborn, or Newborn Plus Medicaid.

(7) $30 is deducted from rental income if that income is consistent with community standards. Additional deductions are allowed if the client can prove greater expenses. The following expenses in excess of $30 may be allowed:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property. This includes utility costs.

(c) only the interest can be deducted on a loan or mortgage made for upkeep or repair;

(d) if meals are provided to a boarder, the value of a one-person food stamp allotment.

(8) Cash gifts that do not exceed $30 a quarter per person in the assistance unit are not countable income. A cash gift may be divided equally among all members of the assistance unit.

(9) Deferred income is countable income when it is received by the client if receipt can be reasonably anticipated.

(10) The value of special circumstance items is not countable income if the items are paid for by donors.

(11) Home energy assistance is not countable income.

(12) All money received from an insurance settlement for destroyed exempt property is counted unless the income is used to purchase replacement property. If income received exceeds the money needed to replace the property, the difference is countable income.

(13) SSA reimbursements of Medicare premiums are not countable income.

(14) Payments from trust funds are countable income if the payments are not available on demand.

(15) FEP, Working Toward Employment Program payments, and Refugee Cash Assistance are not countable income.

(16) Only the portion of a Veteran's Administration check to which the client is legally entitled is countable income.

(17) When the entitlement amount of a check differs from the payment amount, the entitlement amount is countable income unless the deduction is involuntary.

(18) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. Clients who dispute ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to them. Funds that are successfully disputed are not countable income.

(19) The income of an alien's sponsor is not countable income.

(20) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(21) Interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No.105-285 effective October 27, 1998 shall not count as income.

R414-304-5. A, B and D Medicaid and A, B and D Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 20 CFR 416.1110 through 416.1112, 1999 ed., which are incorporated by reference. The department adopts Subsection 1612(b)(4)(A) and (B) of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference.

(2) The Department shall allow SSI recipients, who have a plan for achieving self support approved by the Social Security Administration, to set aside income that allows them to purchase work-related equipment or meet self support goals. This income shall be excluded and may include earned and unearned income.

(3) Expenses relating to the fulfillment of a plan to achieve self-support shall not be allowed as deductions from income.

(4) For A, B and D Medicaid, earned income used to compute a needs-based grant is not countable.

(5) For A, B and D Institutional Medicaid, $125 shall be deducted from earned income before contribution towards cost of care is determined.

(6) For A, B and D Institutional Medicaid impairment-related work expenses shall be allowed as an earned income deduction.

(7) Capital gains shall be included in the gross income from self-employment.

(8) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(9) No deductions shall be allowed for the following business expenses:

(a) transportation to and from work;

(b) payments on the principal for business resources;

(c) net losses from previous tax years;

(d) taxes;

(e) money set aside for retirement;

(f) work-related personal expenses;

(g) depreciation.

(10) Net losses of self-employment from the current tax year may be deducted from other earned income.

(11) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any A, B, or D category programs that use a percentage of the federal poverty guideline as an eligibility income limit.

R414-304-6. Family Medicaid and Family Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(BA), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 1999 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(b) "Part-time student" means a person who is enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours a day, whichever is less.

(c) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that will lead to gainful employment.

(d) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(e) "Aid to Families with Dependent Children" (AFDC) means a state plan for aid that was in effect on June 16, 1996.

(f) "1931 Family Medicaid" means a medical assistance program that uses the AFDC eligibility criteria in effect on June 16, 1996 along with any subsequent amendments in the State Plan, except that 1931 Family Medicaid eligibility for recipients of TANF cash assistance follows the eligibility criteria of the Family Employment Program.

(g) "Temporary Assistance to Needy Families" (TANF) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Family Employment Program (FEP).

(3) The income of a dependent child is not countable income if the child is:

(a) in school or training full-time;

(b) in school or training part-time, if employed less than 100 hours a month;

(c) in JTPA.

(4) For Family Medicaid the 30 and 1/3 deduction is allowed if the wage earner has received a TANF financial payment or 1931 Family Medicaid in one of the four previous months and this disregard has not been exhausted.

(5) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(6) Items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(7) For Family Medicaid, the Department shall deduct child care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $200.00 per child under age 2 and $175.00 per child age 2 and older may be deducted. A maximum of up to $160.00 per child under age 2 and $140.00 per child age 2 and older a month may be deducted from the earned income of clients working less than 100 hours in a calendar month.

(8) For Family Institutional Medicaid, the Department shall deduct child care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $160 a month per child may be deducted. A maximum of up to $130 a month shall be deducted from the earned income of clients working less than 100 hours in a calendar month.

(9) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any family Medicaid programs that use a percentage of the federal poverty guideline as an eligibility income limit, and for determining eligibility for 1931 Family Medicaid.

(10) Under 1931 Family Medicaid, for households that pass the 185% gross income test, if net income does not exceed the applicable BMS, the household shall be eligible for 1931 Family Medicaid. No health insurance premiums or medical bills shall be deducted from gross income to determine net income for 1931 Family Medicaid.

(11) For Family Medicaid recipients who otherwise meet 1931 Family Medicaid criteria, who lose eligibility because of earned income that does not exceed 185% of the federal poverty guideline, the state shall disregard earned income of the specified relative for six months to determine eligibility for 1931 Family Medicaid. Before the end of the sixth month, the state shall conduct a review of the household's earned income. If the earned income exceeds 185% of the federal poverty guideline, the household will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

After the first six months of disregarding earned income, if the average monthly earned income of the household does not exceed 185% of the federal poverty guideline for a household of the same size, the state shall continue to disregard earned income for an additional six months to determine eligibility for 1931 Family Medicaid. In the twelfth month of receiving such income disregard, if the household continues to have earned income, the household will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

R414-304-7. A, B and D Medicaid and Family Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.831, 1998 ed., which is incorporated by reference.

(2) The Department shall allow health insurance premiums providing coverage for anyone in the family or the BMS as deductions in the month of payment. The entire payment shall be allowed as a deduction and will not be prorated. The Department shall not allow health insurance premiums as a deduction for determining eligibility for the poverty-related medical assistance programs or 1931 Family Medicaid.

(3) Medicare premiums shall not be allowed as deductions if the state reimburses the client.

(4) Medical expenses shall be allowed as deductions only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, client's spouse, parent of an unemancipated client or unemancipated sibling of an unemancipated client, a deceased spouse or a deceased dependent child.

(b) The medical bill shall not be paid by Medicaid or a third party.

(c) The medical bill remains unpaid or was paid during the month of application or at anytime in the three months immediately preceding the month of application. The date the medical service was provided on an unpaid expense does not matter.

(5) A medical expense shall not be allowed as a deduction more than once.

(6) A medical expense allowed as a deduction must be for a medically necessary service. The Department of Health shall be responsible for deciding if services are not medically necessary.

(7) The Department shall not allow as a medical expense, co-payments required under the State Medicaid Plan that are owed or paid by the client to receive Medicaid-covered services.

(8) For poverty-related medical assistance, an individual or household shall be ineligible if countable income exceeds the applicable income limit. Medical costs are not allowable deductions for determining eligibility for poverty-related medical assistance programs. No spenddown shall be allowed to meet the income limit for poverty-related medical assistance programs.

(9) As a condition of eligibility, clients must certify on Form 1049B that medical expenses in the benefit month are expected to exceed the spenddown amount. The client must do this when spenddown starts, at each review, and when the client chooses a different spenddown option. If medical expenses are less than or equal to the spenddown, the client shall not be

eligible for that month. The client may elect to use allowable medical expenses the client still owes from previous months to reduce the spenddown so that expected medical expenses for the benefit month exceed the remaining spenddown owed.

(10) Pre-paid medical expenses shall not be allowed as deductions.

(11) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(12) Clients may choose to meet their spenddown obligation by incurring medical expenses or by paying a corresponding amount to the Department.

(13) For A, B and D Medicaid institutional costs shall be allowed as deductions if the services are medically necessary. The Department of Health shall be responsible for deciding if services for institutional care are not medically necessary.

(14) No one shall be required to pay a spenddown of less than $1.

(15) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in an HMO. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

R414-304-8. Medicaid Work Incentive Program Income Deductions.

(1) The Department shall allow the provisions found in R414-304 (1) through (3) and (14).

(2) The Department shall allow the following deductions from income in determining net income that is compared to 250% of the federal poverty guideline:

(a) $20 from unearned income. If there is less than $20 in unearned income, deduct the balance of the $20 from earned income;

(b) $65 plus one have the remainder of earned income.

(3) For the Medicaid Work Incentive Program, an individual or household shall be ineligible if countable income exceeds the applicable income limit. Health insurance premiums and medical costs are not allowed as deductions from income before comparing countable income to the applicable limit.

(4) Health insurance premiums paid by the Medicaid Work Incentive Program individual to purchase health insurance for themselves or other family members in the household shall be allowed as a deduction from income before determining the buy-in premium.

(5) An eligible individual may meet the buy-in premium with cash.

R414-304-9. A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.725 and 435.726, 1998 ed., which are incorporated by reference. The Department adopts Subsection 1902(r)(1) and 1924 of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse who lives with the spouse.

(b) "Dependent" means earning less than $2,000 a year, not being claimed as a dependent by any other individual, and receiving more than half of one's annual support from the client or the client's spouse.

(3) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the Department shall allow health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. Health insurance premiums shall be allowed as a deduction in the month due. The payment shall not be pro-rated.

(b) The Department shall allow the portion of a combined premium, attributable to the institutionalized or waiver-eligible client, as a deduction if the combined premium includes a spouse or dependent family member and is paid from the funds of the institutionalized or waiver eligible client.

(4) Medicare premiums shall not be allowed as deductions if the state pays the premium or reimburses the client.

(5) Medical expenses shall be allowed as deductions only if the expenses meet all of the following conditions:

(a) the medical service was received by the client;

(b) the unpaid medical bill shall not be paid by Medicaid or a third party;

(c) the paid medical bill can be allowed only in the month paid. No portion of any paid bill can be allowed after the month of payment.

(6) A medical expense shall not be allowed as a deduction more than once.

(7) A medical expense allowed as a deduction must be for a medically necessary service. The Department of Health shall be responsible for deciding if services are not medically necessary.

(8) Pre-paid medical expenses shall not be allowed as deductions.

(9) The Department shall not allow as a medical expense, co-payments required under the State Medicaid Plan that are owed or paid by a client to receive Medicaid-covered services.

(10) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(11) Institutionalized clients are to contribute all countable income remaining after allowable deductions to the institution as their contribution to the cost of their care.

(12) The personal needs allowance shall be equal to $45.

(13) Except for an individual eligible for the Personal Assistance Waiver, an individual receiving assistance under the terms of a Home and Community-Based Services Waiver shall be eligible to receive a deduction for a non-institutionalized, non-waiver-eligible spouse and dependent family member as if that individual were institutionalized.

(14) Income received by the spouse or dependent family member shall be counted in calculating the deduction if that

type of income is countable to determine Medicaid eligibility. No income disregards shall be allowed. Certain needs-based income and state supplemental payments shall not be counted in calculating the deduction. Tribal income shall be counted.

(15) If the income of a spouse or dependent family member is not reported, no deduction shall be allowed for the spouse or dependent family member.

(16) A client shall not be eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(17) To determine a deduction for a community spouse, the standard utility allowance for households with heating costs shall be equal to $150. For households without heating costs, actual utility costs shall be used. The maximum allowance for a telephone bill is $20. Clients shall not be required to verify utility costs more than once in a certification period.

(18) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in an HMO. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

R414-304-10. Budgeting.

(1) The Department adopts 42 CFR 435.601 and 435.640, 1998 ed., which are incorporated by reference. The Department adopts 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, 1998 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(b) "Prospective eligibility" means that eligibility is determined each month for the immediately following month based on a best estimate of income.

(c) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(d) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(e) "Income anticipating" means using current facts regarding rate of pay and number of working hours to anticipate future monthly income.

(f) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(g) "Factoring" means that a monthly amount shall be determined to take into account the months of pay where an individual receives a fifth paycheck when paid weekly or a third paycheck when paid every other week. Weekly income shall be factored by multiplying the weekly amount by 4.3 to obtain a monthly amount. Income paid every other week shall be factored by 2.15 to obtain a monthly amount.

(h) "Reportable income changes" are those that cause income to change by more than $25. All income changes must be reported for an institutionalized individual.

(3) The Department shall do prospective budgeting on a monthly basis.

(4) A best estimate of income based on the best available information shall be an accurate reflection of client income in that month.

(5) The Department shall use the best estimate of income to be received or made available to the client in a month to determine eligibility and spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) The Department shall count income in the following manner:

(a) For QMB, SLMB, QI, Medicaid Work Incentive Program, and A, B, D, and Institutional Medicaid income shall be counted as it is received. Income that is received weekly or every other week shall not be factored.

(b) For Family Medicaid programs, income that is received weekly or every other week shall be factored.

(8) Lump sums are income in the month received. Any amount of a lump sum remaining after the end of the month of receipt is a resource. Lump sum payments can be earned or unearned income.

(9) Income paid out under a contract shall be prorated to determine the countable income for each month. Only the prorated amount shall be used to determine spenddown or eligibility for a month. If the income will be received in fewer months than the contract covers, the income shall be prorated over the period of the contract. If received in more months than the contract covers, the income shall be prorated over the period of time in which the money will be received.

(10) To determine the average monthly income for farm and self-employment income, the Department shall determine the annual income earned during one or more past years, or other applicable time period, and factor in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income shall be adjusted during the year when information about changes or expected changes is received by the Department.

(11) Student income received other than monthly shall be prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months classes are in session.

(12) Income from Indian trust accounts not exempt by federal law shall be prorated to determine the monthly countable income when the income varies from month to month, or it is received less often than monthly. This is done by dividing the

total amount by the number of months it covers.

(13) Eligibility for retroactive assistance shall be based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method shall be used for retroactive benefit months, except when the income was not being received during, and was not intended to cover, the retroactive months.

R414-304-11. Income Standards.

(1) The Department adopts Sections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f) and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The Aged and Disabled poverty-related Medicaid income standard shall be calculated as 100% of the federal non-farm poverty guideline. If an Aged or Disabled person's income exceeds this amount the current Medicaid Income Standards (BMS) shall apply unless the disabled individual or a disabled aged individual has earned income. In this case follow the income standards for the Medicaid Work Incentive Program.

(3) The income standard for the Medicaid Work Incentive Program shall be equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount the current Medicaid Income Standards (BMS) shall apply. The Department shall charge a premium equal to 20% of the countable income of the Medicaid Work Incentive Program eligible individual, or the eligible individual and eligible spouse, when this income exceeds 100% of the federal poverty guideline for the number of eligible individuals. When the eligible individual is a minor child, the Department shall charge a premium equal to 20% of the child's countable income when this income exceeds 100% of the federal poverty guideline for a one person household.

(4) The income limit for pregnant women, and children under one year of age, shall be equal to 133% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply.

(5) The current Medicaid income standards (BMS) are as follows:

TABLE

Household Size	Medicaid Income Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

R414-304-12. A, B and D Medicaid, QMB, SLMB, and QI Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 1998 ed., which are incorporated by reference. The Department adopts Subsections 1902(l)(1), (2), and (3), 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The following individuals shall be counted in the BMS for A, B and D Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for A, B, or D Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemable income above the allocation for a spouse.

(3) The following individuals shall be counted in the household size for A or D poverty-related Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemable income above the allocation for a spouse.

(4) The following individuals shall be counted in the household size for a QMB, SLMB, or QI case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemable income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemable income above the allocation for a spouse.

(5) The following individuals shall be counted in the household size for the Medicaid Work Incentive Program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children under age 18

(e) children age 18, 19, or 20 if they are in school full-time,

(6) Eligibility for A, B and D Medicaid and the spenddown, if any; A and D poverty-related Medicaid; and QMB, SLMB, and QI programs shall be based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on R414-304–2.

(7) Eligibility for the Medicaid Work Incentive Program shall be based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client.

(8) If a person is "included" in the BMS, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is "included" in the household size, it means that family member shall be counted as part of the household to determine what income limit applies, regardless of whether that family member's income will be counted or whether that family member will receive medical assistance.

R414-304-13. Family Medicaid Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), 1998 ed., which are incorporated by reference.

(2) Except for determinations under 1931 Family Medicaid, any unemancipated minor child may be excluded from the Medicaid coverage group at the request of the specified relative responsible for the children. An excluded child shall be considered an ineligible child and shall not be counted as part of the household size for deciding what income limit will be applicable to the family. Income and resources of an excluded child shall not be considered when determining eligibility or spenddown.

(3) The Department shall not use a grandparent's income to determine eligibility or spenddown for a minor child, and the grandparent shall not be counted in the household size. A cash contribution from the grandparents received by the minor child or parent of the minor child is countable income.

(4) Except for determinations under 1931 Family Medicaid, if anyone in the household is pregnant, the unborn child shall be included in the household size. If a medical authority confirms that the pregnant woman will have more than one child, all of the unborn children shall be included in the household size.

(5) If a child is voluntarily placed in foster care and is in the custody of a state agency, the parents shall be included in the household size.

(6) Parents who have relinquished their parental rights shall not be included in the household size.

(7) If a court order places a child in the custody of the state, and the child is temporarily placed in an institution, the parents shall not be included in the household size.

(8) If a person is "included" in the household size, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS level or, in the case of poverty-related programs, which poverty guideline level will apply to determine eligibility for the client or family.

R414-304-14. A, B and D Institutional and Waiver Medicaid and Family Institutional Medicaid Filing Unit.

(1) For A, B, and D institutional, and home and community-based waiver Medicaid, the Department shall not use income of the client's parents or the client's spouse to determine eligibility and spenddown.

(2) For Family institutional, and home and community-based waiver Medicaid programs, the Department adopts 45 CFR 206.10(a)(1)(vii), 1998 ed., which is incorporated by reference.

(3) The Department shall base eligibility and spenddown on the income of the client and the sponsor of an alien who is subject to deeming according to the rules described in 20 CFR 416.1166a, 1998 ed., which is incorporated by reference.

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R434. Health, Health Systems Improvement, Primary Care and Rural Health.

R434-50. Nurse Education Financial Assistance.

R434-50-1. Purpose and Authority.

This rule implements the nurse education financial assistance program. It covers scholarships for nurses willing to work in needed nursing specialty areas and loan repayment grants for nurses willing to work in nursing shortage areas of the state, as provided in Title 26, Chapter 9d.

R434-50-2. Definitions.

(1) Definitions for this rule are found in Section 26-9d-1.

(2) "Eligible employment site" means a public or private health care institution or agency or a nursing education institution approved by the committee at which a recipient may perform the service obligation.

(3) "Grant" means a loan repayment under Section 26-9d-5.

(4) "Scholarship" means a scholarship under Section 26-9d-6.

(5) "Committee" means the Nurse Financial Assistance Committee created by Section 26-1-7.

R434-50-3. Designation of Nursing Shortage and Needed Nursing Specialty Areas.

The committee shall designate nursing shortage areas and needed nursing specialty areas based on eligibility and selection criteria.

R434-50-4. Scholarship Administration.

(1) A scholarship may be provided only for those courses required by the educational institution for completion of nursing education.

(2) Before receiving a scholarship, the applicant must enter into a contract with the Department that binds him to the terms of the program.

(3) As requested by the committee, a scholarship recipient shall provide information reasonably necessary for administration of the program.

(4) The committee shall determine the total amount of each scholarship.

(5) For each academic year, the committee may award a scholarship recipient the lesser of $15,000 or the total sum of educational expenses as determined by the committee.

(6) The committee may approve payment to a scholarship recipient for increased federal, state and local taxes due to receipt of the portion of the scholarship that is not tax-exempt.

(7) The reasonable living expenses portion of the scholarship may not exceed 50% of the scholarship for each academic year.

(8) The committee shall determine the amount of educational expenses other than tuition and fees, that are paid to the student.

(9) The committee shall evaluate whether the scholarship recipient's proposed employment site for the service obligation is an eligible employment site.

(10) If there is no available eligible employment site upon a scholarship recipient's graduation, the recipient shall repay the scholarship amount as negotiated in the scholarship contract.

R434-50-5. Scholarship Contract-Contents.

(1) Before receiving a scholarship, each applicant selected shall enter into a scholarship contract with the state agreeing to the terms and conditions upon which the scholarship is given.

(2) The scholarship contract shall include the terms and conditions to carry out the purposes and intent of Title 26, Chapter 9d and these rules.

(3) The scholarship contract shall contain:

(a) a statement of the damages to which the state is entitled for the recipient's breach of the scholarship contract; and

(b) such other statements of the rights and liabilities of the Department, the committee, and the scholarship applicant, not inconsistent with Title 26, Chapter 9d.

R434-50-6. Scholarship Application.

(1) The committee may consider for scholarship candidacy only those applicants who have matriculated into a graduate program at a school of nursing.

(2) A scholarship applicant shall provide evidence of eligibility, demographic data, residential history, documented educational history, employment history, personal and employment references, a Utah nursing license in good standing, and an essay describing plans for working in a needed nursing specialty area, as required and in the format requested by the committee.

(3) A scholarship applicant shall disclose to the committee any other funds applied for, or received in connection with his nursing education.

(4) The Department shall promptly provide written notice to a scholarship applicant on the committee's approving the applicant's participation in the scholarship program, or the committee's disapproving the applicant's participation in the scholarship program.

(a) Within 30 days following provision of the written notice, the applicant shall notify the Department of his intent to accept or reject the scholarship award. If the Department has not received the applicant's notification within 30 days, the Department may cancel the award.

R434-50-7. Scholarship Recipient Eligibility and Selection.

(1) To be eligible for a scholarship, an applicant must:

(a) submit a completed scholarship application to the Department;

(b) be matriculated in a school of nursing;

(c) have been selected by the committee to receive a scholarship;

(d) declare an intent to work in a needed nursing specialty area of the state after completion of graduate training; and

(e) be a nurse who has a license in good standing to practice in the state under Title 58, Chapter 31, Nurse Practice Act.

(2) In selecting an applicant to receive a scholarship, the committee shall evaluate the applicant based on the following criteria:

(a) residential history;

(b) documented educational history;

(c) employment history;

(d) educational, personal and employer references;

(e) an essay describing plans for working in a needed

nursing specialty area;

(f) commitment to serve in a needed nursing specialty area;

(g) applicant's proposed time for completion of education;

(h) length of the applicant's proposed service obligation, with greater consideration being given to applicants who agree to serve for longer periods of time;

(i) the applicant's area of graduate education, with preference given to applicants who choose to specialize in critical areas of need as determined by the committee;

(j) projected nursing education expenses.

(3) The committee may request that the applicant supplement the information requested under R434-50-7(2) to make an informed decision on an application.

(4) To remain eligible to receive a scholarship, an applicant must maintain a passing grade and be a matriculated student.

R434-50-8. Scholarship Recipient Obligations.

(1) Within three months before, and not exceeding one month following completion of nursing education and prior to beginning fulfillment of service obligation, a scholarship recipient shall provide the Department documented evidence from the eligible employment site of its intent to hire the scholarship recipient.

(2) A scholarship recipient must maintain minimum continuous registration to maintain graduate student status until he completes all requirements for his degree. The maximum years leading to a degree may not exceed five years, and must be specified in the recipient's contract, as negotiated with the committee.

(3) A scholarship recipient must begin employment at the eligible employment site determined by the committee within five months of completing the nursing education covered by the scholarship.

(4) A scholarship recipient shall perform full-time work as defined by the recipient's employer, and as specified in the recipient's contract with the Department.

(5) The minimum length of service obligation is two years, or such longer period to which the applicant and the committee may agree.

(6) A scholarship recipient shall obtain approval from the committee prior to any change in the eligible employment site where the service obligation is fulfilled.

R434-50-9. Release of Scholarship Recipient From Obligation.

(1) The committee may release, in full or in part, a recipient from any obligation under the scholarship contract without penalty:

(a) if the service obligation has been fulfilled;

(b) if the recipient is unable to complete nursing education or fulfill the service obligation due to permanent disability that prevents the recipient from performing any work for remuneration or profit;

(c) if the recipient dies;

(d) because of extreme hardship; or

(e) for other good cause shown, as determined by the committee.

R434-50-10. Extension of Contract with Scholarship Recipient.

The committee may extend the time within which the recipient must complete his nursing education as agreed upon in the contract for good cause shown.

R434-50-11. Schedule of Repayment-Scholarship.

(1) A scholarship recipient who breaches his contract with the Department shall begin to repay within 30 days of the breach. The Department may submit for immediate collection all amounts due from a breaching scholarship recipient who does not begin to repay within 30 days.

(2) The breaching scholarship recipient shall pay the total amount due within one year of breaching the contract. The scheduled payback may not be less than four equal quarterly payments.

(3) The amount to be paid back shall be calculated from the end of the month in which the scholarship recipient breached the contract as if the recipient had breached at the end of the month.

(4) The calculation of the amount to be paid back by a scholarship recipient who breaches his contract with the Department prior to finishing school is twice the amount of all funds received from the Department.

(5) The calculation of the amount to be paid back by a scholarship recipient who finishes school but fails to complete the service obligation is as follows:

(a) determine the percentage of retired service obligation by dividing the number of months of retired service obligation by the total number of months of the service obligation,

(b) subtract the amount in (a) from 1.00,

(c) multiply the amount obtained in (b) by 2,

(d) multiply the amount obtained in (c) by the total amount of the recipient's scholarship.

(6) The breaching scholarship recipient shall pay simple interest at the rate of 12% per annum on all funds received under the scholarship contract, from the date he received each installment under the contract.

(7) Any unretired amount following the scheduled payback period is subject to collection.

R434-50-12. Reporting Requirements for Scholarship Recipients.

(1) Each recipient shall assure that the nursing school completes and returns a student status form provided by the Department.

(2) After beginning service and for the duration of the service obligation, the scholarship recipient shall assure that the eligible employment site submits a quarterly statement of verification of employment indicating the recipient's continued employment to the Department within ten business days following the end of each quarter.

R434-50-13. Grant Administration.

(1) A grant may be provided to repay loans taken only for those courses that were required by the educational institution for completion of nursing education.

(2) Before receiving a grant, the applicant must enter into a contract with the Department that binds him to the terms of the

program.

(3) As requested by the committee, a grant recipient shall provide information reasonably necessary for administration of the program.

(4) The committee shall determine the total amount of each loan repayment grant.

(5) For each year of a grant recipient's full-time service at an eligible employment site, the committee may award the recipient the lesser of $15,000 or the outstanding loan principal for educational expenses, as determined by the committee.

(6) The committee may approve payment to a grant recipient for increased federal, state, and local taxes caused by receipt of the grant.

(7) The Department shall make grant payments to a recipient at the end of the first six months of service. The Department shall make subsequent payments at least every six months thereafter for the duration of the contract, except that the committee may approve a different schedule of subsequent payments as requested by the recipient.

(8) The Department shall not pay for a nursing education loan of a grant applicant who is in default at the time of an application.

(9) The committee shall evaluate whether the grant recipient's proposed employment site for the service obligation is an eligible employment site.

R434-50-14. Full-Time Equivalency Provisions for Grant Recipients.

(1) The annual grant amount is based on the level of full-time equivalency that the grant recipient agrees to work.

(2) A grant recipient who provides services for at least 40 hours per week may be awarded a grant based on the percentages as determined by the committee.

(3) A grant recipient who provides services for less than 40 hours per week may be awarded a proportionately lower grant based on a full-time equivalency of 40 hours per week.

R434-50-15. Eligible Bona Fide Loans.

(1) A bona fide loan may include the following:

(a) a commerical loan made by a bank, credit union, savings and loan association, insurance company, school, or credit institution;

(b) a governmental loan made by a federal, state, county, or city agency;

(c) a loan made by another person which is documented by a contract notarized at the time of the making of the loan, indicative of an arm's length transaction, and with competitive term and rate as other loans available to students.

(d) a loan that the applicant conclusively demonstrates is a bona fide loan.

R434-50-16. Grant Contract-Contents.

(1) Before receiving a grant, each applicant selected shall enter into a grant contract with the state agreeing to the terms and conditions upon which the grant is given.

(2) The grant contract shall include the terms and conditions to carry out the purposes and intent of Title 26, Chapter 9d and these rules.

(3) The grant contract shall contain:

(a) a statement of the damages to which the state is entitled for the applicant's breach of the grant contract; and

(b) such other statements of the rights and liabilities of the Department, the committee and the grant applicant, not inconsistent with Title 26, Chapter 9d.

R434-50-17. Grant Application.

(1) A grant applicant shall provide evidence of eligibility, demographic data, residential history, documented educational history, employment history, personal and employment references, a Utah nursing license in good standing, other service obligations, loan certification, and an essay describing plans for working in a nursing shortage area, as required and in the format requested by the committee.

(2) A grant applicant shall disclose to the committee any other funds applied for or received in connection with his nursing education.

(3) A grant applicant shall provide the Department documentation from the eligible employment site that:

(a) the applicant is currently employed at the eligible employment site; or

(b) the eligible employment site intends to hire the applicant.

(4) The Department shall promptly provide written notice to a grant applicant on the committee's approving the applicant's participation in the grant program, or the committee's disapproving the applicant's participation in the grant program.

(a) Within 30 days following provision of the written notice, the applicant shall notify the Department of his intent to accept or reject the grant award. If the Department has not received the applicant's notification within 30 days, the Department may cancel the award.

R434-50-18. Grant Recipient Eligibility and Selection.

(1) To be eligible for a grant, an applicant must:

(a) submit a completed grant application to the Department;

(b) provide proof of graduation from a school of nursing;

(c) be a nurse who has a license in good standing to practice in the state under Title 58, Chapter 31, Nurse Practice Act;

(d) have been selected by the committee to receive a grant;

(e) be available to begin service at an eligible employment site within one month of entering into a contract with the Department; and

(f) provide documented evidence from the eligible employment site of the intent to hire the grant recipient.

(2) In selecting an applicant to receive a grant, the committee shall evaluate the applicant based on the following selection criteria:

(a) residential history;

(b) documented educational history;

(c) employment history;

(d) employer, educational and personal references;

(e) an essay describing plans for working in a nursing shortage area;

(f) commitment to serve in a nursing shortage area;

(g) amount of the nursing education loan;

(h) length of the applicant's proposed service obligation,

with greater consideration being given to applicants who agree to serve for longer periods of time;

(i) the applicant's level of nursing education, with preference given to applicants who can meet shortage area nursing needs, as determined by the committee.

(3) The committee may request that the grant applicant supplement the information requested under R434-50-16(2) to make an informed decision on an application.

R434-50-19. Grant Recipient Obligations.

(1) A grant recipient shall begin service at a specified eligible employment site determined by the committee within one month of entering into a contract with the Department.

(2) A grant recipient shall perform full-time work, defined at the beginning of the service obligation as full-time by the recipient's employer, and as specified in the recipient's contract with the Department.

(3) No period of clinical training required for nursing education may be counted toward satisfying a period of service obligation.

(4) The minimum length of the service obligation is two years, or such longer period to which the applicant and the committee may agree.

(5) A grant recipient shall assure that the eligible employment site provides the Department a statement of the recipient's continued employment.

(6) A grant recipient shall obtain approval from the committee prior to any change in the eligible employment site where the service obligation is fulfilled.

R434-50-20. Release of Grant Recipient from Service Obligation.

(1) The committee may release, in full or in part a recipient from any obligation under the grant contract without penalty:

(a) if the service obligation has been fulfilled;

(b) if the recipient is unable to fulfill the service obligation due to permanent disability that prevents the recipient from performing any work for remuneration or profit;

(c) if the recipient dies;

(d) because of extreme hardship; or

(e) for other good cause shown, as determined by the committee.

R434-50-21. Schedule of Repayment-Grant.

(1) A grant recipient who breaches his contract with the Department shall begin to repay within 30 days of the breach. The Department may submit for immediate collection all amounts due from a breaching grant recipient who does not begin to repay within 30 days.

(2) The breaching grant recipient shall pay the total amount due within one year of breaching the contract. The scheduled payback may not be less than four equal quarterly payments.

(3) The amount to be paid back shall be determined from the end of the month in which the grant recipient breached the contract as if the recipient had breached at the end of the month.

(4) The calculation of the amount to be paid back by a grant recipient who fails to complete the service obligation is as follows:

(a) determine the percentage of retired service obligation by dividing the number of months of retired service obligation by the total number of months of the service obligation,

(b) subtract the amount in (a) from 1.00,

(c) multiply the amount obtained in (b) by 2,

(d) multiply the amount obtained in (c) by the total amount of the recipient's grant.

(5) The breaching grant recipient shall pay simple interest at the rate of 12% per annum on all funds received under the grant contract, from the date he received each installment under the contract.

(6) Any unretired amount following the scheduled payback period is subject to collection.

R434-50-22. Eligible Employment Site Determination.

(1) Criteria the committee shall use to determine an eligible employment site include:

(a) Within a nursing shortage area of the State:

(i) the percentage of the population with incomes under 200% of the federal poverty level;

(ii) the percentage of the population 65 years of age and over;

(iii) the percentage of the population under 18 years of age;

(iv) the distance to the nearest health care provider and barriers to reaching the health care provider.

(b) The committee may give preference to proposed employment sites which provide letters of support from:

(i) practicing health care providers in the service area,

(ii) county and civic leaders,

(iii) hospital administrators,

(iv) business leaders, local chamber of commerce, citizens, and

(v) local health departments.

(c) Other proposed employment site eligibility and selection criteria as determined by the committee.

(2) An eligible employment site approved to have a grant or scholarship recipient must offer a salary and benefit package competitive with salaries and benefits of other nurses in the service area.

(3) A nursing shortage area proposed employment site must apply to and gain approval from the committee in order to be determined eligible for a grant recipient to complete their service obligation.

R434-50-23. Reporting Requirements for Grant Recipients.

After beginning service and for the duration of the service obligation, the grant recipient shall assure that the eligible employment site submits a quarterly statement of verification of employment indicating the grant recipient's continued employment to the Department within ten business days following the end of each quarter.

KEY: grants, scholarships, nurses
October 1, 2001 26-9d
Notice of Continuation February 10, 1998

R512. Human Services, Child and Family Services.

R512-75. Rules Governing Adjudication of Consumer Complaints.

R512-75-1. Introductory Provisions.

(1) Authority and Purpose.

(a) This rule defines consumer complaint procedures in accordance with Subsection 62A-4a-102(4). These procedures are intended to provide for the prompt and equitable resolution of a consumer complaint filed in accordance with this rule.

(2) Definitions.

(a) The definitions contained in Section 63-46b-2 apply. In addition, the following terms are defined for the purposes of this section:

(i) "Absorbable within the Division's appropriation authority" means those expenditures that fall within the Division's budgetary parameters.

(ii) "Panel Action" means all actions by the Consumer Hearing Panel that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all panel actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, and, judicial review of these actions.

(iii) "Aggrieved Person" means any person who is alleged to have been adversely affected by an act or omission of the Division or its employees.

(iv) "Consumer Hearing Panel" or "Panel" means those persons appointed by the Board of Child and Family Services to adjudicate consumer complaints in accordance with Section 62A-4a-102.

(v) The "Department" means the Department of Human Services.

(vi) The "Director" means the Director of the Division.

(vii) The "Division" means the Division of Child and Family Services of the Department of Human Services, including its regional offices.

(viii) "Office of the Child Protection Ombudsman" means the office, separate from the Division of Child and Family Services, designated by the Department to investigate a consumer complaint regarding the Division of Child and Family Services.

(ix)"Ombudsman" means the representative from the Office of the Child Protection Ombudsman designated to investigate a consumer complaint.

(x) "Reasonable time" means the time specified in the action plan.

R512-75-2. Procedures for Filing an Initial Informal Non-adjudicative Complaint With the Division.

(1) An aggrieved person shall first make a reasonable attempt to resolve a complaint with a caseworker and the caseworker's supervisor. If resolution is not reached, a complaint may be filed with the regional office.

(2) If there is a filing of an initial complaint with a Regional Office:

(a) The complainant or aggrieved person shall make a complaint no later than 180 days from the date of the alleged circumstances giving rise to the complaint. Written complaints are preferred but a complaint may be made in any form.

(b) Each complaint shall:

(i) include the aggrieved person's name, address, and phone number, and the names and addresses of all persons to whom a copy of the complaint shall be sent;

(ii) describe the Division's alleged act or omission in sufficient detail to inform the Division of the nature and date of the alleged event.

(iii) describe the action desired; and

(c) The complaint shall be provided to the DCFS Regional staff named in the complaint and filed with a regional office of the Division. The DCFS staff named in the complaint shall have ten working days from the date of the filing of the complaint to submit a response to the complaint.

(3) Investigation of the Complaint by the Regional Office.

(a) Complaints received by the Division's Constituent Services Office will be forwarded to the regional office or appropriate DCFS staff to address the complaint. The regional office or state specialist will contact the complainant and address the complaint. The DCFS regional office or DCFS staff may hold meetings of the concerned parties. The review shall be conducted to the extent necessary to assure that all relevant facts are determined and documented. Minutes and/or tape recordings shall be taken at the meetings. If the complaint is resolved no further action is necessary.

(b) Within 20 calendar days of receiving the complaint, the regional office or DCFS staff shall issue a written decision to the Division's Constituent Services Office, setting forth its action plan to address the complaint.

(c) If a complaint filed with a regional office is not adequately addressed, the complaint shall be forwarded to the Division's Constituent Services Office.

A complaint filed with the Division's Constituent Services Office that is not resolved within a reasonable amount of time shall be forwarded to the Office of the Child Protection Ombudsman. DCFS shall immediately notify the aggrieved person in writing that the complaint is being forwarded to the Office of Child Protection Ombudsman. The Division will forward copies of all correspondence regarding the steps taken by the Division to address the complaint to the Office of Child Protection Ombudsman.

R512-75-3. Procedures for Filing an Informal Non-adjudicative Complaint With the Office of the Child Protection Ombudsman.

(1) An aggrieved person may file a complaint to decision rendered by a regional office to the Office of the Child Protection Ombudsman, or if the Division is unable to resolve the complaint, it shall be forwarded to the Office of Child Protection Ombudsman. If the complaining party is not satisfied with the response they may file a complaint with the Consumer Hearing Panel.

(2) A complaint to the Office of the Child Protection Ombudsman shall be submitted in writing on a form provided by the Office of the Child Protection Ombudsman.

(3) If a consumer complaint indicates an immediate threat to the safety of a child, the Office of the Child Protection Ombudsman shall facilitate an immediate referral to Child Protective Services.

(4) If a consumer complaint indicates no immediate risk to the child, and if there has been no attempt to resolve the

problem with the caseworker or the regional director, the complaint shall be referred back to the Division.

R512-75-4. Compliance with and Appeal of Recommendations of the Office of the Child Protection Ombudsman.

(1) The Division has ten days for the first response to OCPO.

(2) Appeal by the Division.

The Division may file an appeal to the recommendations of the Office of the Child Protection Ombudsman within 10 calendars days of receipt of the recommendations from the Office of Child Protection Ombudsman. The appeal shall be filed with the Department Executive Director. If the Department Executive Director amends a recommendation made by the Office of the Child Protection Ombudsman, the Ombudsman may forward the case to the Consumer Hearing Panel for review. The Office of Child Protection Ombudsman shall notify the aggrieved person in writing of the decision.

(3) DCFS Compliance with the Recommendations of the Office of the Child Protection Ombudsman.

The Division shall have 30 calendar days to provide a status report of the complaint to the Office of Child Protection Ombudsman. The status report shall state the actions taken by the Division to implement the recommendations and shall include an anticipated date of completion.

R512-75-5. Filing of a Consumer Complaint with the Panel without a Decision by the Office of the Child Protection Ombudsman.

(1) A consumer complaint received by the Consumer Hearing Panel that was not previously filed with the Office of the Child Protection Ombudsman shall be forwarded to the Ombudsman for investigation.

(2) The Office of the Child Protection Ombudsman may forward a consumer complaint to the Consumer Hearing Panel for resolution without having reached a decision on the complaint.

(3) A complaint filed with the Ombudsman that is not resolved within a reasonable amount of time, depending on the complexity of the complaint, from the date of the filing shall be forwarded to the Consumer Hearing Panel. The Office of Child Protection Ombudsman shall notify the aggrieved person in writing of the reason for the delay and the additional time needed to reach a decision.

(4) A complaint forwarded to the Consumer Hearing Panel without a decision by the Ombudsman shall be reviewed in the same manner as an appeal of an Ombudsman decision received directly from an aggrieved person.

R512-75-6. Request for Panel Action and Appeal of an Ombudsman Decision to the Consumer Hearing Panel.

(1) Filing of an Appeal to the Consumer Hearing Panel.

(a) The aggrieved person may file the complaint with Consumer Hearing Panel by filing a request for panel action within 15 working days from receipt of the decision.

(b) The request shall be filed or documented in writing to the Consumer Hearing Panel. Information specified in R512-70-4(2) shall be included in the request. A form provided by the Division as described in R512-70-4(3) may be used, but shall not be mandatory as long as all required information is included.

(c) The filing of a request shall be an authorization by the aggrieved person for the Consumer Hearing Panel to review all information permitted by law, including information classified as private or controlled.

(d) The request shall describe in sufficient detail why the Ombudsman's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(e) An allegation specified in the complaint to the Panel may be amended by the aggrieved person or other complainant no less than 20 days prior to commencement of the hearing. The Consumer Hearing Panel shall request a response to the amended allegation from the regional office of the Division. The Division shall have ten days to submit a response to the Panel. Amendments made during or after a hearing may be made only with the permission of the Consumer Hearing Panel. The Panel shall permit liberal amendment of requests for panel action and filing of supplemental requests for panel action.

(f) An amendment or a supplemental request for panel action shall be filed in the same manner as an original request for panel action.

(g) A request for panel action or a supplemental request for panel action may be withdrawn by the aggrieved person prior to the issuance of a final order.

(h) The mailing specified in Subsection 63-46b-3(3) shall be performed by the Consumer Hearing Panel. In doing so, the panel shall assume that, pursuant to Subsection 63-46b-3(3)(b), the aggrieved person and the Division regional office are those having a "direct-interest" in the requested panel action.

(2) Investigation and Rendering of a Decision by the Consumer Hearing Panel.

(a) On an appeal from the Ombudsman, the Consumer Hearing Panel shall review the factual findings of the investigation and the aggrieved person's statement regarding the inappropriateness of the Ombudsman's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted, if necessary, to clarify questions of fact before making any decision not absorbable within the Division's appropriation authority.

(b) The Consumer Hearing Panel shall issue a written decision within 20 working days after receiving the appeal or concluding the hearing process.

(c) If the Consumer Hearing Panel is unable to reach a decision within 20 working days, the aggrieved person shall be notified in writing of the reason for the delay and the additional time needed to reach a decision.

(3) Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

(a) Any meetings, hearings, or conference proceedings held by the Panel shall be considered adjudicative proceedings and shall be informal in accordance with Sections 63-46b-4 and 63-46b-5.

(4) Availability of Hearings Before the Panel.

(a) A hearing shall be held if the aggrieved person requests a hearing within the time frame specified in R512-75-6(1)(a).

(5) Hearing before the Panel.

(a) A hearing shall be held only after notice to all parties at least five working days in advance.

(b) The Panel may issue subpoenas or other orders to compel production of necessary evidence and the appearance of witnesses.

(c) All parties shall have access to information contained in the Division's files and to all materials and information gathered in any investigation, to the extent permitted by GRAMA.

(d) All hearings shall be open to the parties.

(e) Within a reasonable time after the close of an informal adjudicative proceeding, the Consumer Hearing Panel shall issue a signed order in writing that states its:

(i) findings of fact;

(ii) conclusions;

(iii) decision;

(iv) a notice of any right of administrative or judicial review available to the parties; and

(v) the time limits for filing a petition for judicial review.

(f) The Panel's order shall formulate its factual findings based on the evidence before the Panel.

(g) The Panel shall have authority to add to a client record in accordance with Section 63-2-603 of the Government Records Management Act (GRAMA).

(h) A copy of the Consumer Hearing Panel's order shall be promptly mailed to each of the parties.

(i) The Panel shall record all hearings.

(j) Any party, at his own expense, may have a reporter approved by the Panel prepare a transcript from the Panel's record of the hearing.

(6) Classification of Records.

(a) The record of each complaint filed with the Division and each appeal to the Consumer Hearing Panel, and all written records produced or received as part of such proceedings, shall be classified as protected as defined under Section 63-2-304 until the Ombudsman or Consumer Hearing Panel issues the decision, at which time any portions of the records which pertains to an individual's medical condition shall be classified as controlled as defined under Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. The Panel may release reports of Panel findings and decisions in a format suitable for public release that does not identify specific individuals and does not include controlled, protected, or private information.

(7) Agency Review.

(a) Agency review shall not be allowed. Nothing contained in this rule prohibits a party from filing a petition for reconsideration pursuant to Section 63-46b-13.

R512-75-7. Compliance with Recommendations of the Consumer Hearing Panel.

The Division shall have no longer than 60 calendar days to implement the recommendations of the Consumer Hearing Panel and provide documentation of compliance. Failure to do so may result in an order to the Division to show cause why the Division should not be held in contempt for failing to comply with the recommendations of the Panel. If the Division cannot implement the recommendations within 60 days a status report and implementation plan must be submitted to the panel before the expiration 60 days.

R512-75-8. Judicial Review of a Decision by the Consumer Hearing Panel.

(1) An aggrieved person may seek judicial review of a Panel decision in accordance with Section 63-46b-14.

R512-75-9. Scope and Applicability.

(a) The provisions of this section supersede the provisions of other Division rules which conflict.

KEY: consumer hearing panel*, grievance procedures

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	63-2-304
	63-2-603
	63-46b

R527. Human Services, Recovery Services.
R527-201. Medical Support Services.
R527-201-1. Federal Requirements.

The Office of Recovery Services/Child Support Services, (ORS/CSS), adopts the federal regulations as published in 45 CFR 303.30 and 303.31 (2000), and in 65 FR 82165 and 82166 (45 CFR 303.32), which are hereby incorporated by reference.

R527-201-2. Definition.

1. The National Medical Support Notice (NMSN) is the federally approved form that ORS/CSS shall use, when appropriate, to notify an employer to enroll dependent children in an employment-related group health insurance plan in accordance with a child support order.

R527-201-3. Limitation of Services.

ORS/CSS shall not:

1. pursue establishment of specific amounts for ongoing medical support,

2. initiate an action to obtain a judgment for uninsured medical expenses, or

3. collect and disburse premium payments to insurance companies.

R527-201-4. Medical Support Services in Non-IV-A Cases.

Medical Support Services shall be provided in conjunction with child support services to applicants who are not receiving Medicaid unless the applicant notifies ORS/CSS that the children are already covered under a health insurance plan and provides ORS/CSS with the insurance information.

R527-201-5. Conditions Under Which Non-IV-A Medicaid Recipients May Decline Support Services.

ORS/CSS shall provide child and spousal support services; however, a Non-IV-A Medicaid recipient may decline child and spousal support services if paternity is not an issue and there is an order for the non-custodial parent to provide medical support.

R527-201-6. Securing a Medical Support Provision in the Support Order.

1. Notice to potentially obligated parents: The notice to potentially obligated parents shall include a provision that an administrative or judicial proceeding will occur to determine whether either parent should be ordered to purchase and maintain appropriate medical insurance for the children. This notification shall be provided when either of the following conditions is met:

a. the state initiates an action to establish a final support order or to adjust an existing child support order; or

b. the state joins a divorce or modification action initiated by either the custodial or the non-custodial parent.

2. If a judicial support order does not include a medical support provision, ORS/CSS shall commence judicial action to modify the order to include a medical support provision.

R527-201-7. Reasonable Cost of Insurance Premiums.

Employment-related or other group coverage that does not exceed 5% of the obligated parent's monthly gross income is generally considered reasonable in cost. However, an employer may not withhold more than the lesser of the amount allowed under the Consumer Credit Protection Act, the amount allowed by the state of the employee's principal place of employment, or the amount allowed for health insurance premiums by the child support order. If the combined child support and medical support obligations exceed the allowable deduction amount, the employer shall withhold according to the law, if any, of the state of the employee's principal place of employment requiring prioritization between child support and medical support. If the employee's principal place of employment is in Utah, the employer shall deduct current child support before deducting amounts for health insurance coverage. If the amount necessary to cover the health insurance premiums cannot be deducted due to prioritization or limitations on withholding, the employer shall notify ORS/CSS.

R527-201-8. Credit for Premium Payments and Effect of Changes to the Premium Amount Subsequent to the Order.

1. If the order or underlying worksheet gives credit of a specific amount for the children's portion of the premium and the amount of the premium decreases, ORS/CSS may reduce the amount of the credit without seeking a modification of the order.

2. If the order or underlying worksheet does not mention a specific credit for insurance premiums, ORS/CSS shall give credit for the child(ren)'s portion of the insurance premium when the insurance coverage is verified.

3. When a support order does not include a medical insurance provision, and a parent voluntarily enrolls the child(ren) in an insurance plan:

a. in Non-IV-A cases, if the parents agree to share equally the cost of the insurance, ORS/CSS shall give credit or offset the other parent's share of the expense. If the parents disagree, the order must be modified to include an insurance provision before the credit or the offset shall be given.

b. in IV-A cases, ORS/CSS shall give credit for 50% of the child(ren)'s portion of the insurance premium.

4. ORS/CSS shall notify both parents in writing whenever the credit is changed.

R527-201-9. Establishing Costs for Pregnancy and Confinement.

1. When establishing a judgment for medical costs for pregnancy and confinement in IV-A and Non-IV-A Medicaid paternity and separation cases, ORS/CSS shall research the exact pregnancy and confinement costs which have accumulated to date.

2. When establishing a judgment for medical costs for pregnancy and confinement in Non-IV-A Non-Medicaid Cases, ORS/CSS shall consult with the mother to determine the amount of the uninsured pregnancy and confinement expenses.

3. When establishing any judgment for medical costs for pregnancy and confinement, one half of the uninsured pregnancy and confinement costs shall be charged to the non-custodial parent.

R527-201-10. Enforcement of Obligation to Maintain Medical and Dental Insurance.

1. In Non-IV-A cases and in IV-A Medicaid cases,

appropriate steps shall be taken to ensure compliance with orders which require the obligated parent to maintain insurance. Obligated parents shall demonstrate compliance by providing ORS/CSS with policy numbers and the insurance provider name for the dependent children for whom the medical support is ordered.

2. In Non-IV-A cases and in IV-A Medicaid cases, if an obligated parent has been ordered to maintain employer-based medical insurance and insurance is available at a reasonable cost according to R527-201-7 through an employment-related group health plan, ORS/CSS shall use the NMSN to transfer notice of the insurance provision to the obligated parent's employer unless ORS/CSS is notified pursuant to Section 62A-11-326.1 that the children are already enrolled in an insurance plan in accordance with the order.

3. When appropriate, ORS/CSS shall send the NMSN to the obligated parent's employer within two business days after the name of the obligated parent has been entered into the registry of the State Directory of New Hires, matched with ORS/CSS records, and reported to ORS/CSS in accordance with Subsection 35A-7-105(2).

4. The employer shall transfer the NMSN to the appropriate group health plan for which the children are eligible within twenty business days of the date of the NMSN if all of the following criteria are met:

a. the obligated parent is still employed by the employer;

b. the employer maintains or contributes to plans providing dependent or family health coverage;

c. the obligated parent is eligible for the coverage available through the employer; and

d. state or federal withholding limitations, prioritization, or both, do not prevent withholding the amount required to obtain coverage.

5. If more than one coverage option is available under a group insurance plan and the obligated parent is not already enrolled, ORS/CSS in consultation with the custodial parent may select the least expensive option if the option complies with the child support order and benefits the children. The insurer shall enroll the children in the plan's default option or least expensive option in accordance with Subsection 62A-11-326.2(1)(b) unless another option is specified by ORS/CSS.

6. The employer shall determine if the necessary employee contributions for the insurance coverage are available. If the amounts necessary are available, the employer shall begin withholding when appropriate and remit directly to the plan.

7. In accordance with Subsections 62A-11-326.1(2) and (3), the obligated parent may contest withholding insurance premiums based on a mistake of fact. The employer shall continue withholding under the NMSN until notified by ORS/CSS to terminate withholding insurance premiums.

8. If a parent successfully contests the action to enroll the children in a group health plan based on a mistake of fact, ORS/CSS shall notify the employer to discontinue enrollment and withholding insurance premiums for the children.

9. In accordance with Subsection 62A-11-406(9), the employer shall promptly notify ORS/CSS when the obligated parent's employment is terminated.

10. ORS/CSS shall promptly notify the employer when a current order for medical support is no longer in effect for which ORS/CSS is responsible.

R527-201-11. Obligated Parent Receiving Medicaid.

1. If an obligated parent is receiving Medicaid or was receiving Medicaid at the time the medical debt was incurred, ORS/CSS shall not enforce payment of the medical debt regardless of medical support provisions in the order.

2. In an unestablished paternity case, if the father's income was taken into consideration when determining the household's eligibility for Medicaid, ORS/CSS shall not enforce payment of medical expenses regardless of the medical support provisions in the order, but shall enforce the health insurance provision.

KEY: child support, health insurance, medicaid

September 17, 2001	**63-46b-1 et seq.**
Notice of Continuation March 20, 1997	**62A-11-326.1**
	62A-11-326.2
	62A-11-326.3
	62A-11-406(9)
	78-45-7.15
	35A-7-105(2)

R527. Human Services, Recovery Services.

R527-800. Acquisition of Real Property, and Medical Support Cooperation Requirements.

R527-800-1. Purpose and Authority.

A. Purpose

Enforcement actions may be initiated against real property to satisfy financial obligations when other methods have failed or are unavailable in a case.

B. Authority

Section 62A-11-104 charges the Office of Recovery Services with the duty to collect money due the department. Enforcement actions shall be initiated in accordance with the specific statutory authority provided under specific state statute and in accordance with the Criminal Code, Utah Rules of Civil Procedure Uniform Probate Code and the Judicial Code Utah Code Annotated.

R527-800-2. Acquisition and Disposition of Real Property.

A. The department may acquire property in payment for an obligation by:

1. voluntary conveyance.
2. conveyance by heirs; or
3. execution.

B. Acquisition of real property is an action of last resort.

C. Voluntary conveyance shall be by Warranty or Quit Claim Deed in favor of the department.

D. Property owned by the state is tax exempt in accordance with Section 59-2-1101.

R527-800-3. Sale of Real Property.

A. Certified appraisals and preliminary title reports may be requested.

B. The department will not provide title insurance. The State will clear all back taxes and encumbrances from the property at the time of closing.

R527-800-4. Liens, Cost of Sale.

The costs of sale which are allowed are those provided in 62A-11-111.

R527-800-5. Sanction, Medical Support, TPL, Paternity.

In accordance with 42 CFR 433.147-148 a recipient of medical assistance must cooperate with the state agency in providing information regarding Third Party Liability, establishment of paternity for children to establish medical support liability, and in utilizing all available third party resources to offset medicaid expenditures. Failure to cooperate will result in the recipient being removed from the medical assistance case.

KEY: enforcement, civil procedure, medicaid, welfare fraud

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	62A-11-104
	62A-11-110

R590. Insurance, Administration.
R590-178. Securities Custody.
R590-178-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Utah Insurance Code Sections 31A-2-201, 31A-2-206, and 31A-4-108.

R590-178-2. Purpose and Scope.

The purpose of this rule is to authorize insurers to utilize modern systems for holding and transferring securities without physical delivery of securities certificates. This rule applies to all Utah domestic insurers.

R590-178-3. Definitions.

As used in this rule:

A. "Adequately Capitalized" means the capital threshold level determined by the standards adopted by United States banking regulators.

B. "Agent" means a bank or trust company that maintains an account in its name in a clearing corporation or is a member of the Federal Reserve System through which a custodian participates in a clearing corporation or the Federal Reserve book-entry system.

C. "Clearing Corporation" means a corporation, as defined in Subsection 70A-8-101(1)(e), organized for the purpose of effecting transactions in securities by computerized book-entry.

D. "Custodian" means a national bank or state bank that is, at all times during which it acts as custodian, no less than adequately capitalized or a trust company with minimum net worth of $1,500,000 at all times during which it acts as a custodian. Custodians shall be licensed by the United States or any state thereof, and shall be regularly examined by the licensing authority.

E. "Federal Reserve book-entry system" means the computerized systems sponsored by the United States Department of the Treasury and other agencies and instrumentalities of the United States for holding and transferring securities of the United States government and the agencies and instrumentalities.

R590-178-4. Rule.

A. An insurer may, by written agreement with a custodian, provide for the custody of its securities. The securities may be held by the custodian or be held in a clearing corporation or the Federal Reserve book-entry system. Securities so held are referred to in this rule as "Custodial Securities."

B. Agreements shall be in writing and shall be authorized by a resolution of the Board of Directors of the insurer or by a committee authorized pursuant to 31A-5-412. The terms of the agreement shall comply with the following:

1. Certificated securities held by the custodian shall be held separate from the securities of the custodian and its customers or in a fungible bulk of securities as part of a Filing of Securities by Issue arrangement.

2. Securities held in fungible bulk by the custodian and securities in a clearing corporation or in the Federal Reserve book-entry system shall be separately identified on the custodian's books and records as owned by the insurer. The records shall identify which custodial securities are held by the custodian and which securities are in a clearing corporation or in the Federal Reserve book-entry system. If the securities are in a clearing corporation or in the Federal Reserve book-entry system, the records shall identify the location of the securities, and if in a clearing corporation, the name of the clearing corporation, and if through an agent, the name of the agent.

3. All custodial securities that are registered shall be registered in the name of the insurer or in the name of a nominee of the insurer or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee.

4. Custodial securities shall be held subject to the instructions of the insurer, except that custodial securities used to meet the deposit requirements set forth in Subsection 31A-2-206(2) shall be subject to the Insurance Commissioner's exclusive direction until control is released by the commissioner and shall not be withdrawn by the insurer without the approval of the Insurance Commissioner.

5. The custodian shall be required to send, or cause to be sent, to the insurer confirmations of all transfers of custodial securities to or from the account of the insurer and reports of holdings of custodial securities at such times and containing such information as may be reasonably requested by the insurer.

6. During the course of the custodian's regular business hours, an officer or employee of the insurer, an independent accountant selected by the insurer, or a representative of the Insurance Department shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodial securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurer.

7. Upon written request from the insurer, the custodian and its agents shall be required to send to the insurer:

(a) a copy of the most recent available information on the internal controls of the clearing corporation or the Federal Reserve system; and

(b) a copy of the most recent available outside auditor report that addresses the custodian's or its agent's internal accounting control of custodial securities.

8. The insurer shall identify and require the custodian to maintain records sufficient to meet the insurer's regulatory reporting requirements.

9. The custodian shall provide, upon written request from an appropriate officer of the insurer, the appropriate affidavits with respect to custodial securities. These shall be substantially in the form of Custodian Affidavits, Form A, 298-6, Form B, 298-7, and Form C, 298-8, published by NAIC Model Regulation Service.

a. "Form A" is to be used by a custodian bank or trust company where securities entrusted to its care have not been redeposited elsewhere;

b. "Form B" is to be used in instances where a custodian bank or trust company maintains securities on deposit with The Depository Trust Company or like entity; and

c. "Form C" is to be used where ownership is evidenced by book entry at a Federal Reserve Bank.

10. The custodian shall be obligated to indemnify the insurer for any loss of custodial securities occasioned by the negligence or dishonesty of the custodian's officers or

employees, and for burglary, robbery, holdup, theft and mysterious disappearance, including loss by damage or destruction. In the event that there is loss of indemnified custodial securities, the custodian shall promptly replace the securities or their fair market value.

11. The agreement may provide that the custodian will not be liable for failure to take an action required under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war, whether declared or not and including existing wars, revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause beyond its reasonable control.

12. In the event that the custodian gains entry in a clearing corporation or in the Federal Reserve book-entry system through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to provisions of liability for loss of custodial securities substantially similar to the liability provisions applicable to the custodian.

13. Banks shall be required to report their capital threshold level, as determined by the standards adopted by United States banking regulators, to the insurer and the Insurance Commissioner. The bank's current capital threshold level shall be reported on enactment of the agreement and within 45 days after the end of each calendar year.

14. Trust companies shall be required to provide current annual financial statements to the insurer and the Insurance Commissioner within 45 days after the end of each calendar year.

R590-178-5. Penalties and Prohibitions.

A. Insurers found to be or to have been in violation of this rule shall be subject to fine, suspension, revocation of license or other penalties permitted by Section 31A-2-308.

B. Insurers are not authorized to provide for the custody of their securities except as granted in this rule. Custodial securities held in violation of this rule shall be disregarded in determining and reporting the financial condition of an insurer.

R590-178-6. Separability.

If any provision of this rule or the application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions may not be affected.

KEY: insurance law
October 1, 1996 31A-4-108
Notice of Continuation September 12, 2001

R590. Insurance, Administration.
R590-207. Health Agent Commissions for Small Employer Groups.
R590-207-1. Authority.

This rule is issued and based upon the authority granted the commissioner under Sections 31A-2-201(3)(a) and 31A-30-104(6).

R590-207-2. Purpose.

The purpose of this rule is to establish guidelines relating to commission structure for small group health insurance agent in the small employer group market that affect access to health insurance coverage for small employer groups.

R590-207-3. Applicability.

This rule applies to all licensed insurers doing health insurance business under Title 31A, Chapter 30, the Individual and Small Employer Health Insurance Act.

R590-207-4. Definitions.

The definitions in Sections 31A-1-301 and 31A-30-103 apply to this rule.

R590-207-5. Commission Schedule Policy.

A health insurance carrier shall not structure agent commission rates that, directly or indirectly, create a restriction, hindrance, or barrier to access to coverage for the smallest group identified in the commission schedule.

The commission for the smallest size group in the commission schedule may not be designed to avoid, directly or indirectly, the requirements of guarantee issue or renewal in the marketing of health insurance to small business owners.

TABLE

ACCEPTABLE EXAMPLES:

A commission structure that is in compliance would be: an employer group size 2-5 would receive a 10% commission, an employer group size 6-25 would receive a 9% commission, and an employer group size 26-50 would receive a 7% commission.

Another example of an acceptable commission schedule would be: for employer group size 2-5 the commission would be $20/Per Member Per Month(PMPM), for employer group size 6-25 the commission would be $18/PMPM, and for employer group size 26-50 the commission would be $16/PMPM.

Case Size in Lives	Rate Up	Comm. Rate
2-24	< 22	12%
2-24	22% to <44%	8%
2-24	44% to <65%	8%
2-24	65% to 85%	7%
25-50		8%

UNACCEPTABLE EXAMPLE:

Case Size in Lives	First Year	Renewal
Up to 3	3%	3%
4-14	8%	8%
15-29	7%	7%
30-50	6%	6%

Case Size in Lives	Rate Up	Comm. Rate
2-24	< 22%	12%
2-24	22% to <44%	10%
2-24	44% to <65%	8%
2-24	65% to 85%	6%
25-50		8%

R590-207-6. Penalties.

Any carrier with a commission structure that is not in compliance with this rule after the effective date of this rule will be considered in violation of this rule and will be subject to the penalties provided for in Section 31A-2-308.

R590-207-7. Compliance Date.

This rule is in effect on the date stated in the Notice of Effective Date form relating to this rule that the department files with the Division of Administrative Rules (the "effective date"). The effective date will follow a period of 30 days during which interested parties will have time to prepare to be in compliance with this rule. It will also be the date on which the department will begin enforcing this rule. The Notice of Effective Date is published in the Utah State Bulletin, a publication of the Division of Administrative Rules. The Utah State Bulletin is found at the website, http://www.rules.state.ut.us/. In addition, the effective date may be found at the department's website, http://www.insurance.utah.gov by clicking on INDUSTRY RESOURCES and then RULES and scrolling down to the appropriate reference to the rule.

R590-207-8. Severability.

If any provision or clause of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

KEY: insurance law
September 30, 2001 **31A-2-201**
31A-2-202

R641. Natural Resources; Oil, Gas and Mining Board.
R641-105. Filing and Service.
R641-105-100. Requests for Agency Action (Petitions).

All Requests for Agency Action filed by the 10th day of each calendar month may be considered by the Board for inclusion in the schedule of matters to be heard at its regularly scheduled meeting during the following calendar month. At the time the request is filed, petitioner will also file any motions, affidavits, briefs, or memoranda intended to be offered by petitioner in support of said petition or motion. Petitioner will file with the petition a list of the names and last known addresses of all persons required by statute to be served or whose legally protected interest may be affected thereby. This rule will apply to all matters initiated by the Board on its own motion as well as to statements, briefs, or memoranda in support thereof prepared by the Division or by the Staff. Any petition or other materials filed after the 10th day of any calendar month may be considered by the Board at its regularly scheduled meeting during the following month only upon separate motion of petitioner made at or before the hearing for good cause shown.

R641-105-200. Responses.

All responses to petitions, responses to motions by petitioner, and motions by respondent, together with all affidavits, briefs, or memoranda in support thereof, filed by the 10th day of the month or two weeks before the scheduled hearing, whichever is earlier, in the month in which the hearing on the matter is scheduled (the "Response Date") may be considered by the Board at its regularly scheduled meeting during that month. This rule will apply to all statements, briefs, or memoranda prepared by the Division or by the Staff in response to any petition or motion by petitioner. Any responses or other materials filed after the Response Date may be considered at the Board's regularly scheduled meeting for that month only upon separate motion of respondent made at or before the hearing for good cause shown.

R641-105-300. Motions.

All motions or responses to motions available to a petitioner or respondent at the time his or her Request for Agency Action or response is filed will be filed and served with the petition or response as provided in R641-105-100 and R641-105-200. Subsequent written motions, other than motions for exceptions to the filing requirements of these rules, must be filed by the time the response is due under R641-105-200. Oral responses and written responses to motions may be presented or filed at or before the hearing. Oral motions and responses to oral motions may be presented at the hearing.

R641-105-500. Exhibits.

Any exhibits intended to be offered by petitioners will be filed at least thirty days prior to the date of the hearing for which the exhibits are intended. Respondents and intervenors will supply exhibits with their respective pleadings. Any exhibits intended to be offered by the parties in rebuttal of evidence presented at the hearing will be presented at the hearing. The Board, on its own motion, may order the continuance of any proceeding until the next regularly scheduled meeting of the Board in order to allow adequate time for the Staff to evaluate any evidence presented during the hearing.

R641-105-600. Place of Filing.

An original and 14 copies of all pleadings, affidavits, briefs, memoranda and exhibits will be filed with the secretary of the Board. The Board may direct any party to provide additional copies as needed.

R641-105-700. Temporary Procedural Rulings.

The Chairman or designated Acting Chairman of the Board may issue temporary rulings on procedural motions that arise between Board hearings dates. These rulings will be reviewed and decided upon by the Board at its next regularly scheduled meeting.

R641-105-800. Computation of Time.

In computing any period of time prescribed or allowed by these rules, or by the Board, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intervening Saturdays, Sundays, or legal holidays will be excluded in the computation.

KEY: administrative procedure
October 1, 2001 **40-6-1 et seq.**
Notice of Continuation May 1, 1998

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-301. Coal Mine Permitting: Permit Application Requirements.
R645-301-100. General Contents.

The rules in R645-301-100 present the requirements for the entitled information which should be included in each permit application.

110. Minimum Requirements for Legal, Financial, Compliance and Related Information.

111. Introduction.

111.100. Objectives. The objectives of R645-301-100 are to insure that all relevant information on the ownership and control of persons who conduct coal mining and reclamation operations, the ownership and control of the property to be affected by the operation, the compliance status and history of those persons, and other important information is provided in the application to the Division.

111.200. Responsibility. It is the responsibility of the permit applicant to provide to the Division all of the information required by R645-301-100.

111.300. Applicability. The requirements of R645-301-100 apply to any person who applies for a permit to conduct coal mining and reclamation operations.

111.400. The applicant shall submit the information required by R645-301-112 and R645-301-113 in a format prescribed by OSM rules governing the Applicant Violator System information needs.

112. Identification of Interests. An application will contain the following:

112.100. A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

112.200. The name, address, telephone number and, as applicable, social security number and employer identification number of the:

112.210. Applicant;

112.220. Applicant's resident agent; and

112.230. Person who will pay the abandoned mine land reclamation fee.

112.300. For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in R645-100-200 of this chapter, as applicable:

112.310. The person's name, address, social security number and employer identification number;

112.320. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

112.330. The title of the person's position, date position was assumed, and when submitted under R645-300-147, date of departure from the position;

112.340. Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a coal mining and reclamation operation in the United States within five years preceding the date of the application; and

112.350. The application number or other identifier of, and the regulatory authority for, any other pending coal mine operation permit application filed by the person in any State in the United States.

112.400. For any coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in R645-100-200 the operation's:

112.410. Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

112.420. Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

112.500. The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined;

112.600. The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area;

112.700. The MSHA numbers for all mine-associated structures that require MSHA approval; and

112.800. A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by R645-301-112.800 which is not on public file pursuant to Utah law will be held in confidence by the Division as provided under R645-300-124.320.

112.900. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-112.100 through R645-301-112.800.

113. Violation Information. An application will contain the following:

113.100. A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

113.110. Had a federal or state permit to conduct coal mining and reclamation operations suspended or revoked in the five years preceding the date of submission of the application; or

113.120. Forfeited a performance bond or similar security deposited in lieu of bond;

113.200. A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to under R645-301-113.110 and R645-301-113.120 has occurred, including:

113.210. Identification number and date of issuance of the permit, and the date and amount of bond or similar security;

113.220. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

113.230. The current status of the permit, bond, or similar security involved;

113.240. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

113.250. The current status of the proceedings; and

113.300. For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any derivative State reclamation law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any coal mining and reclamation operation, a list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

113.310. Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

113.320. A brief description of the violation alleged in the notice;

113.330. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in R645-301-113.300 to obtain administrative or judicial review of the violation;

113.340. The current status of the proceedings and of the violation notice; and

113.350. The actions, if any, taken by any person identified in R645-301-113.300 to abate the violation.

113.400. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-113.

114. Right-of-Entry Information.

114.100. An application will contain a description of the documents upon which the applicant bases their legal right to enter and begin coal mining and reclamation operations in the permit area and will state whether that right is the subject of pending litigation. The description will identify the documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

114.200. Where the private mineral estate to be mined has been severed from the private surface estate, an applicant will also submit:

114.210. A copy of the written consent of the surface owner for the extraction of coal by certain coal mining and reclamation operations;

114.220. A copy of the conveyance that expressly grants or reserves the right to extract coal by certain coal mining and reclamation operations; or

114.230. If the conveyance does not expressly grant the right to extract the coal by certain coal mining and reclamation operations, documentation that under applicable Utah law, the applicant has the legal authority to extract the coal by those operations.

114.300. Nothing given under R645-301-114.100 through R645-301-114.200 will be construed to provide the Division with the authority to adjudicate property rights disputes.

115. Status of Unsuitability Claims.

115.100. An application will contain available information as to whether the proposed permit area is within an area designated as unsuitable for coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under R645-103-300, R645-103-400, or 30 CFR Part 769.

115.200. An application in which the applicant claims the exemption described in R645-103-333 will contain information supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed coal mining and reclamation operations.

115.300. An application in which the applicant proposes to conduct coal mining and reclamation operations within 300 feet of an occupied dwelling or within 100 feet of a public road will contain the necessary information and meet the requirements of R645-103-230 through R645-103-238.

116. Permit Term.

116.100. Each permit application will state the anticipated or actual starting and termination date of each phase of the coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

116.200. If the applicant requires an initial permit term in excess of five years in order to obtain necessary financing for equipment and the opening of the operation, the application will:

116.210. Be complete and accurate covering the specified longer term; and

116.220. Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

117. Insurance, Proof of Publication and Facilities or Structures Used in Common.

117.100. A permit application will contain either a certificate of liability insurance or evidence of self-insurance in compliance with R645-301-800.

117.200. A copy of the newspaper advertisements of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the Division will be filed with the Division and will be made a part of the application not later than 4 weeks after the last date of publication as required by R645-300-121.100.

117.300. The plans of a facility or structure that is to be shared by two or more separately permitted coal mining and reclamation operations may be included in one permit application and referenced in the other applications. In accordance with R645-301-800, each permittee will bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective

responsibilities. If such agreement is reached, then the application will include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement will demonstrate to the satisfaction of the Division that all responsibilities under the R645 Rules for the facility or structure will be met.

118. Filing Fee. Each permit application to conduct coal mining and reclamation operations pursuant to the State Program will be accompanied by a fee of $5.00.

120. Permit Application Format and Contents.

121. The permit application will:

121.100. Contain current information, as required by R645-200, R645-300, R645-301 and R645-302.

121.200. Be clear and concise; and

121.300. Be filed in the format required by the Division.

122. If used in the permit application, referenced materials will either be provided to the Division by the applicant or be readily available to the Division. If provided, relevant portions of referenced published materials will be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

123. Applications for permits; permit changes; permit renewals; or transfers, sales or assignments of permit rights will contain the notarized signature of a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

130. Reporting of Technical Data.

131. All technical data submitted in the permit application will be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data.

132. Technical analyses will be planned by or under the direction of a professional qualified in the subject to be analyzed.

140. Maps and Plans.

141. Maps submitted with permit applications will be presented in a consolidated format, to the extent possible, and will include all the types of information that are set forth on U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area will be at a scale of 1:6,000 or larger. Maps of the adjacent area will clearly show the lands and waters within those areas and be at a scale determined by the Division, but in no event smaller than 1:24,000.

142. All maps and plans submitted with the permit application will distinguish among each of the phases during which coal mining and reclamation operations were or will be conducted at any place within the life of operations. At a minimum, distinctions will be clearly shown among those portions of the life of operations in which coal mining and reclamation operations occurred:

142.100 Prior to August 3, 1977;

142.200 After August 3, 1977, and prior to either:

142.210. May 3, 1978; or

142.220 In the case of an applicant or operator which obtained a small operator's exemption in accordance with the Interim Program rules (MC Rules), January 1, 1979;

142.300 After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the State Program; and

142.400 After the estimated date of issuance of a permit by the Division under the State Program.

150. Completeness. An application for a permit to conduct coal mining and reclamation operations will be complete and will include at a minimum information required under R645-301 and, if applicable, R645-302.

R645-301-200. Soils.

The regulations in R645-301-200 present the minimum requirements for information on soil resources which will be included in each permit application.

210. Introduction.

211. The applicant will present a description of the premining soil resources as specified under R645-301-221. Topsoil and subsoil to be saved under R645-301-232 will be separately removed and segregated from other material.

212. After removal, topsoil will be immediately redistributed in accordance with R645-301-242, stockpiled pending redistribution under R645-301-234, or if demonstrated that an alternative procedure will provide equal or more protection for the topsoil, the Division may, on a case-by-case basis, approve an alternative.

220. Environmental Description.

221. Prime Farmland Investigation. All permit applications, whether or not Prime Farmland is present, will include the results of a reconnaissance inspection of the proposed permit area to indicate whether Prime Farmland exists as given under R645-302-313.

222. Soil Survey. The applicant will provide adequate soil survey information for those portions of the permit area to be affected by surface operations incident to UNDERGROUND COAL MINING and RECLAMATION ACTIVITIES and for the permit area of SURFACE COAL MINING and RECLAMATION ACTIVITIES consisting of the following:

222.100. A map delineating different soils;

222.200. Soil identification;

222.300. Soil description; and

222.400. Present and potential productivity of existing soils.

223. Soil Characterization. The survey will meet the standards of the National Cooperative Soil Survey as incorporated by reference in R645-302-314.100.

224. Substitute Topsoil. Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application will include results of analyses, trials, and tests as described under R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243. The Division may also require the results of field-site trials or greenhouse tests as required under R645-301-233.

230. Operation Plan.

231. General Requirements. Each permit application will include a:

231.100. Description of the methods for removing and storing topsoil, subsoil, and other materials;

231.200. Demonstration of the suitability of topsoil substitutes or supplements;

231.300. Testing plan for evaluating the results of topsoil handling and reclamation procedures related to revegetation; and

231.400. Narrative that describes the construction, modification, use and maintenance of topsoil handling and storage areas.

232. Topsoil and Subsoil Removal.

232.100. All topsoil will be removed as a separate layer from the area to be disturbed, and segregated.

232.200. Where the topsoil is of insufficient quantity or poor quality for sustaining vegetation, the materials approved by the Division in accordance with R645-301-233.100 will be removed as a separate layer from the area to be disturbed, and segregated.

232.300. If topsoil is less than six inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

232.400. The Division may not require the removal of topsoil for minor disturbances which:

232.410. Occur at the site of small structures, such as power poles, signs, or fence lines; or

232.420. Will not destroy the existing vegetation and will not cause erosion.

232.500. Subsoil Segregation. The Division may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of R645-301-234 and R645-301-242 if it finds that such subsoil layers are necessary to comply with the revegetation requirements of R645-301-353 through R645-301-357.

232.600. Timing. All material to be removed under R645-301-232 will be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

232.700. Topsoil and subsoil removal under adverse conditions. An exception to the requirements of R645-301-232 to remove topsoil or subsoils in a separate layer from an area to be disturbed by surface operations may be granted by the Division where the operator can demonstrate;

232.710. The removal of soils in a separate layer from the area by the use of conventional machines would be unsafe or impractical because of the slope or other condition of the terrain or because of the rockiness or limited depth of the soils; and

232.720. That the requirements of R645-301-233 have been or will be fulfilled with regard to the use of substitute soil materials unless no available substitute material can be made suitable for achieving the revegetation standards of R645-301-356, in which event the operator will, as a condition of the permit, be required to import soil material of the quality and quantity necessary to achieve such revegetation standards.

233. Topsoil Substitutes and Supplements.

233.100. Selected overburden materials may be substituted for, or used as a supplement to topsoil if the operator demonstrates to the Division that the resulting soil medium is equal to, or more suitable for sustaining vegetation on nonprime farmland areas than the existing topsoil, has a greater productive capacity than that which existed prior to mining for prime farmland reconstruction, and results in a soil medium that is the best available in the permit area to support revegetation.

233.200. The suitability of topsoil substitutes and supplements will be determined on the basis of analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The Division may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of topsoil substitutes or supplements.

233.300. Results of physical and chemical analyses of overburden and topsoil to demonstrate that the resulting soil medium is equal to or more suitable for sustaining revegetation than the available topsoil, provided that field-site trials, and greenhouse tests are certified by an approved laboratory in accordance with any one or a combination of the following sources:

233.310. NRCS published data based on established soil series;

233.320. NRCS Technical Guides;

233.330. State agricultural agency, university, Tennessee Valley Authority, Bureau of Land Management of U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior; or

233.340. Results of physical and chemical analyses, field-site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

233.400. If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with R645-301-233.300.

234. Topsoil Storage.

234.100. Materials removed under R645-301-232.100, R645-301-232.200, and R645-301-232.300 will be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

234.200. Stockpiled materials will:

234.210. Be selectively placed on a stable site within the permit area;

234.220. Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

234.230. Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the Division; and

234.240. Not be moved until required for redistribution unless approved by the Division.

234.300. Where long-term disturbed areas will result from facilities and preparation plants and where stockpiling of materials removed under R645-301-232.100 would be detrimental to the quality or quantity of those materials, the Division may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that:

234.310. Such action will not permanently diminish the capability of the topsoil of the host site; and

234.320. The material will be retained in a condition more

suitable for redistribution than if stockpiled.

240. Reclamation Plan.

241. General Requirements. Each permit application will include plans for redistribution of soils, use of soil nutrients and amendments and stabilization of soils.

242. Soil Redistribution.

242.100. Topsoil materials removed under R645-301-232.100, R645-301-232.200, and R645-301-232.300 and stored under R645-301-234 will be redistributed in a manner that:

242.110. Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

242.120. Prevents excess compaction of the materials; and

242.130. Protects the materials from wind and water erosion before and after seeding and planting.

242.200. Before redistribution of the materials removed under R645-301-232 the regraded land will be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

242.300. The Division may not require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or roads if it determines that:

242.310. Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation, and

242.320. Such embankments will be otherwise stabilized.

243. Soil Nutrients and Amendments. Nutrients and soil amendments will be applied to the initially redistributed material when necessary to establish the vegetative cover.

244. Soil Stabilization.

244.100. All exposed surface areas will be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

244.200. Suitable mulch and other soil stabilizing practices will be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The Division may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

244.300. Rills and gullies, which form in areas that have been regraded and topsoiled and which either:

244.310. Disrupt the approved postmining land use or the reestablishment of the vegetative cover, or

244.320. Cause or contribute to a violation of water quality standards for receiving streams will be filled, regraded, or otherwise stabilized; topsoil will be replaced; and the areas will be reseeded or replanted.

250. Performance Standards.

251. All topsoil, subsoil and topsoil substitutes or supplements will be removed, maintained and redistributed according to the plan given under R645-301-230 and R645-301-240.

252. All stockpiled topsoil, subsoil and topsoil substitutes or supplements will be located, maintained and redistributed according to plans given under R645-301-230 and R645-301-240.

R645-301-300. Biology.

310. Introduction. Each permit application will include descriptions of the:

311. Vegetative, fish, and wildlife resources of the permit area and adjacent areas as described under R645-301-320;

312. Potential impacts to vegetative, fish and wildlife resources and methods proposed to minimize these impacts during coal mining and reclamation operations as described under R645-301-330 and R645-301-340; and

313. Proposed reclamation designed to restore or enhance vegetative, fish, and wildlife resources to a condition suitable for the designated postmining land use as described under R645-301-340.

320. Environmental Description.

321. Vegetation Information. The permit application will contain descriptions as follows:

321.100. If required by the Division, plant communities within the proposed permit area and any reference area for SURFACE COAL MINING AND RECLAMATION ACTIVITIES and areas affected by surface operations incident to an underground mine for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES. This description will include information adequate to predict the potential for reestablishing vegetation; and

321.200. The productivity of the land before mining within the proposed permit area for SURFACE COAL MINING AND RECLAMATION ACTIVITIES and areas affected by surface operations incident to an underground mine for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity will be determined by yield data or estimates for similar sites based on current data from the U. S. Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.

322. Fish and Wildlife Information. Each application will include fish and wildlife resource information for the permit area and adjacent areas.

322.100. The scope and level of detail for such information will be determined by the Division in consultation with state and federal agencies with responsibilities for fish and wildlife and will be sufficient to design the protection and enhancement plan required under R645-301-333.

322.200. Site-specific resource information necessary to address the respective species or habitats will be required when the permit area or adjacent area is likely to include:

322.210. Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), or those species or habitats protected by similar state statutes;

322.220. Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

322.230. Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

322.300. Fish and Wildlife Service review. Upon request, the Division will provide the resource information required under R645-301-322 and the protection and enhancement plan required under R645-301-333 to the U.S. Fish and Wildlife Service Regional or Field Office for their review. This information will be provided within 10 days of receipt of the request from the Service.

323. Maps and Aerial Photographs. Maps or aerial photographs of the permit area and adjacent areas will be provided which delineate:

323.100. The location and boundary of any proposed reference area for determining the success of revegetation;

323.200. Elevations and locations of monitoring stations used to gather data for fish and wildlife, and any special habitat features;

323.300. Each facility to be used to protect and enhance fish and wildlife and related environmental values; and

323.400. If required, each vegetative type and plant community, including sample locations. Sufficient adjacent areas will be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species identified under R645-301-322.

330. Operation Plan. Each application will contain a plan for protection of vegetation, fish, and wildlife resources throughout the life of the mine. The plan will provide:

331. A description of the measures taken to disturb the smallest practicable area at any one time and through prompt establishment and maintenance of vegetation for interim stabilization of disturbed areas to minimize surface erosion. This may include part or all of the plan for final revegetation as described in R645-301-341.100 and R645-301-341.200;

332. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES a description of the anticipated impacts of subsidence on renewable resource lands identified in R645-301-320, and how such impact will be mitigated;

333. A description of how, to the extent possible, using the best technology currently available, the operator will minimize disturbances and adverse impacts to fish and wildlife and related environmental values during coal mining and reclamation operations, including compliance with the Endangered Species Act of 1973 during coal mining and reclamation operations, including the location and operation of haul and access roads and support facilities so as to avoid or minimize impacts on important fish and wildlife species or other species protected by state or federal law; and how enhancement of these resources will be achieved, where practicable. This Description will:

333.100. Be consistent with the requirements of R645-301-358;

333.200. Apply, at a minimum, to species and habitats identified under R645-301-322; and

333.300. Include protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity.

340. Reclamation Plan.

341. Revegetation. Each application will contain a reclamation plan for final revegetation of all lands disturbed by coal mining and reclamation operations, except water areas and the surface of roads approved as part of the postmining land use, as required in R645-301-353 through R645-301-357, showing how the applicant will comply with the biological protection performance standards of the State Program. The plan will include, at a minimum:

341.100. A detailed schedule and timetable for the completion of each major step in the revegetation plan;

341.200. Descriptions of the following:

341.210. Species and amounts per acre of seeds and/or seedlings to be used. If fish and wildlife habitat will be a postmining land use, the criteria of R645-301-342.300 apply.

341.220. Methods to be used in planting and seeding;

341.230. Mulching techniques, including type of mulch and rate of application;

341.240. Irrigation, if appropriate, and pest and disease control measures, if any; and

341.250. Measures proposed to be used to determine the success of revegetation as required in R645-301-356.

341.300. The Division may require greenhouse studies, field trials, or equivalent methods of testing proposed or potential revegetation materials and methods to demonstrate that revegetation is feasible pursuant to R645-300-133.710.

342. Fish and Wildlife. Each application will contain a fish and wildlife plan for the reclamation and postmining phase of operation consistent with R645-301-330, the performance standards of R645-301-358 and include the following:

342.100. Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement will be given explaining why enhancement is not practicable.

342.200. Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas will be selected on the basis of the following criteria:

342.210. Their proven nutritional value for fish or wildlife;

342.220. Their use as cover for fish or wildlife; and

342.230. Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants will be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

342.300. Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the operator will intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

342.400. Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the operator will

intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

350. Performance Standards.

351. General Requirements. All coal mining and reclamation operations will be carried out according to plans provided under R645-301-330 through R645-301-340.

352. Contemporaneous Reclamation. Revegetation on all land that is disturbed by coal mining and reclamation operations, will occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for combined SURFACE and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES issued under R645-302-280. The Division may establish schedules that define contemporaneous reclamation.

353. Revegetation: General Requirements. The permittee will establish on regraded areas and on all other disturbed areas, except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan.

353.100. The vegetative cover will be:

353.110. Diverse, effective, and permanent;

353.120. Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the Division;

353.130. At least equal in extent of cover to the natural vegetation of the area; and

353.140. Capable of stabilizing the soil surface from erosion.

353.200. The reestablished plant species will:

353.210. Be compatible with the approved postmining land use;

353.220. Have the same seasonal characteristics of growth as the original vegetation;

353.230. Be capable of self-regeneration and plant succession;

353.240. Be compatible with the plant and animal species of the area; and

353.250. Meet the requirements of applicable Utah and federal seed, poisonous and noxious plant; and introduced species laws or regulations.

353.300. The Division may grant exception to the requirements of R645-301-353.220 and R645-301-353.230 when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

353.400. When the approved postmining land use is cropland, the Division may grant exceptions to the requirements of R645-301-353.110, R645-301-353.130, R645-301-353.220 and R645-301-353.230. The requirements of R645-302-317 apply to areas identified as prime farmland.

354. Revegetation: Timing. Disturbed areas will be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected.

355. Revegetation: Mulching and Other Soil Stabilizing Practices. Suitable mulch and other soil stabilizing practices will be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The Division may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

356. Revegetation: Standards for Success.

356.100. Success of revegetation will be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the extent of cover of the reference area or other approved success standard, and the general requirements of R645-301-353.

356.110. Standards for success, statistically valid sampling techniques for measuring success, and approved methods are identified in the Division's "Vegetation Information Guidelines, Appendix A."

356.120. Standards for success will include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking will be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success will use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

356.200. Standards for success will be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

356.210. For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area will be at least equal to that of a reference area or such other success standards approved by the Division.

356.220. For areas developed for use as cropland, crop production on the revegetated area will be at least equal to that of a reference area or such other success standards approved by the Division. The requirements of R645-302-310 through R645-302-317 apply to areas identified as prime farmland.

356.230. For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation will be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

356.231. Minimum stocking and planting arrangements will be specified by the Division on the basis of local and regional conditions and after consultation with and approval by Utah agencies responsible for the administration of forestry and wildlife programs. Consultation and approval will be on a permit specific basis and will be performed in accordance with the "Vegetation Information Guidelines" of the division.

356.232. Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement will have utility for the approved postmining land use. At the time of bond release, such trees and shrubs will be healthy, and at least 80 percent will have been in place for at least 60 percent of the applicable minimum period of responsibility. No trees and shrubs in place for less than two growing seasons will be counted in determining stocking adequacy.

356.233. Vegetative ground cover will not be less than that required to achieve the approved postmining land use.

356.240. For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover will not be less than that required to control erosion.

356.250. For areas previously disturbed by mining that were not reclaimed to the requirements of R645-200 through R645-203 and R645-301 through R645-302 and that are remined or otherwise redisturbed by coal mining and reclamation operations, at a minimum, the vegetative ground cover will be not less than the ground cover existing before redisturbance and will be adequate to control erosion.

356.300. Siltation structures will be maintained until removal is authorized by the Division and the disturbed area has been stabilized and revegetated. In no case will the structure be removed sooner than two years after the last augmented seeding.

356.400. When a siltation structure is removed, the land on which the siltation structure was located will be revegetated in accordance with the reclamation plan and R645-301-353 through R645-301-357.

357. Revegetation: Extended Responsibility Period.

357.100. The period of extended responsibility for successful vegetation will begin after the last year of augmented seeding, fertilization, irrigation, or other work, excluding husbandry practices that are approved by the Division in accordance with paragraph R645-301-357.300.

357.200. Vegetation parameters identified in R645-301-356.200 will equal or exceed the approved success standard during the growing seasons for the last two years of the responsibility period. The period of extended responsibility will continue for five or ten years based on precipitation data reported pursuant to R645-301-724.411, as follows:

357.210. In areas of more than 26.0 inches average annual precipitation, the period of responsibility will continue for a period of not less than five full years.

357.220. In areas of 26.0 inches or less average annual precipitation, the period of responsibility will continue for a period of not less than ten full years.

357.300. Husbandry Practices - General Information

357.301. The Division may approve certain selective husbandry practices without lengthening the extended responsibility period. Practices that may be approved are identified in R645-301-357.310 through R645-301-357.365. The operator may propose to use additional practices, but they would need to be approved as part of the Utah Program in accordance with 30 CFR 732.17. Any practices used will first be incorporated into the mining and reclamation plan and approved in writing by the Division. Approved practices are normal conservation practices for unmined lands within the region which have land uses similar to the approved postmining land use of the disturbed area. Approved practices may continue as part of the postmining land use, but discontinuance of the practices after the end of the bond liability period will not jeopardize permanent revegetation success. Augmented seeding, fertilization, or irrigation will not be approved without extending the period of responsibility for revegetation success and bond liability for the areas affected by said activities and in accordance with R645-301-820.330.

357.302. The Permittee will demonstrate that husbandry practices proposed for a reclaimed area are not necessitated by inadequate grading practices, adverse soil conditions, or poor reclamation procedures.

357.303. The Division will consider the entire area that is bonded within the same increment, as defined in R645-301-820.110, when calculating the extent of area that may be treated by husbandry practices.

357.304. If it is necessary to seed or plant in excess of the limits set forth under R645-301-357.300, the Division may allow a separate extended responsibility period for these reseeded or replanted areas in accordance with R645-301-820.330.

357.310. Reestablishing trees and shrubs

357.311. Trees or shrubs may be replanted or reseeded at a rate of up to a cumulative total of 20% of the required stocking rate through 40% of the extended responsibility period.

357.312. If shrubs are to be established by seed in areas of established vegetation, small areas will be scalped. The number of shrubs to be counted toward the tree and shrub density standard for success from each scalped area is limited to one.

357.320. Weed Control and Associated Revegetation. Weed control through chemical, mechanical, and biological means discussed in R645-301-357.321 through R645-301-357.323 is allowed through the entire extended responsibility period for noxious weeds and through the first 20% of the responsibility period for other weeds. Any revegetation necessitated by the following weed control methods will be performed according to the seeding and transplanting parameters set forth in R645-301-357.324.

357.321. Chemical Weed Control. Weed control through chemical means, following the current Weed Control Handbook (published annually or biannually by the Utah State University Cooperative Extension Service) and herbicide labels, is allowed.

357.322. Mechanical Weed Control. Mechanical practices that may be approved include hand roguing, grubbing and mowing.

357.323. Biological Weed Control. Selective grazing by domestic livestock is allowed. Biological control of weeds through disease, insects, or other biological weed control agents is allowed but will be approved on a case-by-case basis by the Division, and other appropriate agency or agencies which have the authority to regulate the introduction and/or use of biological control agents.

357.324. Where weed control practices damage desirable vegetation, areas treated to control weeds may be reseeded or replanted according to the following limitations. Up to a cumulative total of 15% of a reclaimed area may be reseeded or replanted during the first 20% of the extended responsibility period without restarting the responsibility period. After the first 20% of the responsibility period, no more than 3% of the reclaimed area may be reseeded in any single year without restarting the responsibility period, and no continuous reseeded area may be larger than one acre. Furthermore, no seeding is allowed after the first 60% of the responsibility period or Phase II bond release, whichever comes first. Any seeding outside these parameters is considered to be "augmentative seeding," and will restart the extended responsibility period.

357.330. Control of Other Pests.

357.331. Control of big game (deer, elk, moose, antelope) may be used only during the first 60% of the extended responsibility period or until Phase II bond release, whichever comes first. Any methods used will first be approved by the Division and, as appropriate, the land management agency and the Utah Division of Wildlife Resources. Methods that may be used include fencing and other barriers, repellents, scaring, shooting, and trapping and relocation. Trapping and special hunts or shooting will be approved by the Division of Wildlife Resources. Other control techniques may be allowed but will be considered on a case-by-case basis by the Division and by the Utah Division of Wildlife Resources. Appendix C of the Division's "Vegetation Information Guidelines" includes a non-exhaustive list of publications containing big game control methods.

357.332. Control of small mammals and insects will be approved on a case-by-case basis by the Utah Division of Wildlife Resources and/or the Utah Department of Agriculture. The recommendations of these agencies will also be approved by the appropriate land management agency or agencies. Small mammal control will be allowed only during the first 60% of the extended responsibility period or until Phase II bond release, whichever comes first. Insect control will be allowed through the entire extended responsibility period if it is determined, through consultation with the Utah Department of Agriculture or Cooperative Extension Service, that a specific practice is being performed on adjacent unmined lands.

357.340. Natural Disasters and Illegal Activities Occurring After Phase II Bond Release. Where necessitated by a natural disaster, excluding climatic variation, or illegal activities, such as vandalism, not caused by any lack of planning, design, or implementation of the mining and reclamation plan on the part of the Permittee, the seeding and planting of the entire area which is significantly affected by the disaster or illegal activities will be allowed as an accepted husbandry practice and thus will not restart the extended responsibility period. Appendix C of the Division's "Vegetation Information Guidelines" references publications that show methods used to revegetate damaged land. Examples of natural disasters that may necessitate reseeding which will not restart the extended responsibility period include wildfires, earthquakes, and mass movements originating outside the disturbed area.

357.341. The extent of the area where seeding and planting will be allowed will be determined by the Division in cooperation with the Permittee.

357.342. All applicable revegetation success standards will be achieved on areas reseeded following a disaster, including R645-301-356.232 for areas with a designated postmining land use of forestry or wildlife.

357.343. Seeding and planting after natural disasters or illegal activities will only be allowed in areas where Phase II bond release has been granted.

357.350. Irrigation. The irrigation of transplanted trees and shrubs, but not of general areas, is allowed through the first 20% of the extended responsibility period. Irrigation may be by such methods as, but not limited to, drip irrigation, hand watering, or sprinkling.

357.360. Highly Erodible Area and Rill and Gully Repair. The repair of highly erodible areas and rills and gullies will not be considered an augmentative practice, and will thus not restart the extended responsibility period, if the affected area as defined in R645-301-357.363 comprises no more than 15% of the disturbed area for the first 20% of the extended responsibility period and if no continuous area to be repaired is larger than one acre.

357.361. After the first 20% of the extended responsibility period but prior to the end of the first 60% of the responsibility period or until Phase II bond release, whichever comes first, highly erodible area and rill and gully repair will be considered augmentative, and will thus restart the responsibility period, if the area to be repaired is greater than 3% of the total disturbed area or if a continuous area is larger than one acre.

357.362. The extent of the affected area will be determined by the Division in cooperation with the Permittee.

357.363. The area affected by the repair of highly erodible areas and rills and gullies is defined as any area that is reseeded as a result of the repair. Also included in the affected areas are interspacial areas of thirty feet or less between repaired rills and gullies. Highly erodible areas are those areas which cannot usually be stabilized by ordinary conservation treatments and if left untreated can cause severe erosion or sediment damage.

357.364. The repair and/or treatment of rills and gullies which result from a deficient surface water control or grading plan, as defined by the recurrence of rills and gullies, will be considered an augmentative practice and will thus restart the extended responsibility period.

357.365. The Permittee shall demonstrate by specific plans and designs the methods to be used for the treatment of highly erodible areas and rills and gullies. These will be based on a combination of treatments recommended in the Soil Conservation Service Critical Area Planting recommendations, literature recommendations including those found in Appendix C of the Division's "Vegetation Information Guidelines", and other successful practices used at other reclamation sites in the State of Utah. Any treatment practices used will be approved by the Division.

358. Protection of Fish, Wildlife, and Related Environmental Values. The operator will, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and will achieve enhancement of such resources where practicable.

358.100. No coal mining and reclamation operation will be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973. The operator will promptly report to the Division any state- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the Division will consult with appropriate state and federal fish and wildlife agencies and, after consultation, will identify whether, and under what conditions, the operator may proceed.

358.200. No coal mining and reclamation operations will be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The

operator will promptly report to the Division any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the Division will consult with the U.S. Fish and Wildlife Service and the Utah Division of Wildlife Resources and, after consultation, will identify whether, and under what conditions, the operator may proceed.

358.300. Nothing in the R645 Rules will authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 et seq.

358.400. The operator conducting coal mining and reclamation operations will avoid disturbances to, enhance where practicable, restore, or replace, wetlands and riparian vegetation along rivers and streams and bordering ponds and lakes. Coal mining and reclamation operations will avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

358.500. Each operator will, to the extent possible using the best technology currently available:

358.510. Ensure that electric powerlines and other transmission facilities used for, or incidental to, coal mining and reclamation operations on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the Division determines that such requirements are unnecessary;

358.520. Design fences, overland conveyers, and other potential barriers to permit passage for large mammals, except where the Division determines that such requirements are unnecessary; and

358.530. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

R645-301-400. Land Use and Air Quality.

The rules in R645-301-400 present the requirements for information related to Land Use and Air Quality which are to be included in each permit application.

410. Land Use. Each permit application will include a descriptions of the premining and proposed postmining land use(s).

411. Environmental Description.

411.100. Premining Land-Use Information. The application will contain a statement of the condition and capability of the land which will be affected by coal mining and reclamation operations within the proposed permit area, including:

411.110. A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use of the land will also be described;

411.120 A narrative of land capability which analyzes the land-use description in conjunction with other environmental resources information required under R645-301-411.100, and R645-301 and R645-302. The narrative will provide analyses of the capability of the land before any coal mining and reclamation operations to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the area proposed to be affected by coal mining and reclamation operations; and

411.130. A description of the existing land uses and land-use classifications under local law, if any, of the proposed permit and adjacent areas.

411.140. Cultural and Historic Resources Information. The application will contain maps as described under R645-301-411.141 and a supporting narrative which describe the nature of cultural and historic resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas. The description will be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and from local archeological, historic, and cultural preservation agencies.

411.141. Cultural and Historic Resources Maps. These maps will clearly show:

411.141.1. The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas;

411.141.2. Each cemetery that is located in or within 100 feet of the proposed permit area; and

411.141.3. Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act.

411.142. Coordination with the State Historic Preservation Officer (SHPO). The narrative presented under R645-301-411.140 will also describe coordination efforts with and present evidence of clearances by the SHPO. For any publicly owned parks or places listed on the National Register of Historic Places that may be adversely affected by the proposed coal mining and reclamation operations, each plan will describe the measures to be used:

411.142.1. To prevent adverse impacts; or

411.142.2. If valid existing rights exist or joint agency approval is to be obtained under R645-103-236, to minimize adverse impacts.

411.143. The Division may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the national Register of Historic Places through:

411.143.1. Collection of additional information;

411.143.2. Conducting field investigations; or

411.143.3. Other appropriate analyses.

411.144. The Division may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

411.200. Previous Mining Activity. The application will state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

411.210. The type of mining method used;

411.220. The coal seams or other mineral strata mined;

411.230. The extent of coal or other minerals removed;

411.240. The approximate dates of past mining; and

411.250. The uses of the land preceding mining.

412. Reclamation Plan.

412.100. Postmining Land-Use Plan. Each application will contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land-use policies and plans. The plan will explain:

412.110. How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

412.120. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, where range or grazing is the proposed postmining use, the detailed management plans to be implemented;

412.130. Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900; and

412.140. The consideration which has been given to making all of the proposed coal mining and reclamation operations consistent with surface owner plans and applicable Utah and local land-use plans and programs.

412.200. Land Owner or Surface Manager Comments. The description will be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and Utah and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

412.300. Suitability and Compatibility. Assure that final fills containing excess spoil are suitable for reclamation and revegetation and are compatible with the natural surroundings and the approved postmining land use.

413. Performance Standards.

413.100. Postmining Land Use. All disturbed areas will be restored in a timely manner to conditions that are capable of supporting:

413.110. The uses they were capable of supporting before any mining; or

413.120. Higher or better uses.

413.200. Determining Premining Uses of Land.

413.210. The premining uses of land to which the postmining land use is compared will be those uses which the land previously supported, if the land has not been previously mined and has been properly managed.

413.220. The postmining land use for land that has been previously mined and not reclaimed will be judged on the basis of the land use that existed prior to any mining: provided that, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use will be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

413.300. Criteria for Alternative Postmining Land Uses. Higher or better uses may be approved by the Division as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:

413.310. There is a reasonable likelihood for achievement of the use;

413.320. The use does not present any actual or probable hazard to public health or safety, or threat of water diminution or pollution; and

413.330. The use will not:

413.331. Be impractical or unreasonable;

413.332. Be inconsistent with applicable land-use policies or plans;

413.333. Involve unreasonable delay in implementation; or

413.334. Cause or contribute to violation of federal, Utah, or local law.

414. Interpretation of R645-301-412 and R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900 for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, Reclamation Plan: Postmining Land Use. The requirements of R645-301-412-130, for approval of an alternative postmining land use, may be met by requesting approval through the permit revision procedures of R645-303-220 rather than requesting such approval in the original permit application. The original permit application, however, must demonstrate that the land will be returned to its premining land-use capability as required by R645-301-413.100. An application for a permit revision of this type:

414.100. Must be submitted in accordance with the filing deadlines of R645-303-220;

414.200. Will constitute a significant alteration from the mining operations contemplated by the original permit; and

414.300. Will be subject to the requirements of R645-300-120 through R645-300-155 and R645-300-200.

420. Air Quality.

421. Coal mining and reclamation operations will be conducted in compliance with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and any other applicable Utah or federal statutes and regulations containing air quality standards.

422. The application will contain a description of coordination and compliance efforts which have been undertaken by the applicant with the Utah Bureau of Air Quality.

423. For all SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates exceeding 1,000,000 tons of coal per year, the application will contain an air pollution control plan which includes the following:

423.100 An air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices proposed under R645-301-423.200 to comply with federal and Utah air quality standards; and

423.200 A plan for fugitive dust control practices as required under R645-301-244.100 and R645-301-244.300.

424. All plans for SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates of 1,000,000 tons of coal per year or less, will include a plan for fugitive dust control practices as required under R645-301-244 and R645-301-244.300.

425. All plans for SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates of 1,000,000 tons or less will include an air quality monitoring program, if required by the division, to provide sufficient data to judge the effectiveness of the fugitive dust control plan required under R645-301-424.

R645-301-500. Engineering.

The rules in R645-301-500 present the requirements for engineering information which is to be included in a permit application.

510. Introduction. The engineering section of the permit application is divided into the operation plan, reclamation plan, design criteria, and performance standards. All of the activities associated with the coal mining and reclamation operations must be designed, located, constructed, maintained, and reclaimed in accordance with the operation and reclamation plan. All of the design criteria associated with the operation and reclamation plan must be met.

511. General Requirements. Each permit application will include descriptions of:

511.100. The proposed coal mining and reclamation operations with attendant maps, plans, and cross sections;

511.200. The proposed mining operation and its potential impacts to the environment as well as methods and calculations utilized to achieve compliance with design criteria; and

511.300. Reclamation.

512. Certification.

512.100. Cross Sections and Maps. Certain cross sections and maps required to be included in a permit application will be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer or land surveyor, with assistance from experts in related fields such as hydrology, geology and landscape architecture, and will be updated as required by the Division. The following cross sections and maps will be certified:

512.110. Mine workings to the extent known as described under R645-301-521.110;

512.120. Surface facilities and operations as described under R645-301-521.124, R645-301-521.164, R645-301-521.165 and R645-301-521.167;

512.130. Surface configurations as described under R645-301-542.300 and R645-302-200;

512.140. Hydrology as described under R645-301-722, and as appropriate, R645-301-731.700 through R645-301-731.740; and

512.150. Geologic cross sections and maps as described under R645-301-622.

512.200. Plans and Engineering Designs. Excess spoil, durable rock fills, coal mine waste, impoundments, primary roads and variances from approximate original contour require certification by a qualified registered professional engineer.

512.210. Excess Spoil. The professional engineer experienced in the design of earth and rock fills will certify the design according to R645-301-535.100.

512.220. Durable Rock Fills. The professional engineer experienced in the design of earth and rock fills must certify that the durable rock fill design will ensure the stability of the fill and meet design requirements according to R645-301-535.100 and R645.301-535.300.

512.230. Coal Mine Waste. The professional engineer experienced in the design of similar earth and waste structures must certify the design of the disposal facility according to R645-301-536.

512.240. Impoundments. The professional engineer will use current, prudent, engineering practices and will be experienced in the design and construction of impoundments and certify the design of the impoundment according to R645-301-743.

512.250. Primary Roads. The professional engineer will certify the design and construction or reconstruction of primary roads as meeting the requirements of R645-301-534.200 and R645-301-742.420.

512.260. Variance From Approximate Original Contour. The professional engineer will certify the design for the proposed variance from the approximate original contour, as described under R645-302-270, in conformance with professional standards established to assure the stability, drainage and configuration necessary for the intended use of the site.

513. Compliance With MSHA Regulations and MSHA Approvals.

513.100. Coal processing waste dams and embankments will comply with MSHA, 30 CFR 77.216-1 and 30 CFR 77.216-2 (see R645-301-528.400 and R645-301-536.820).

513.200. Impoundments and sedimentation ponds meeting the size or other qualifying criteria of MSHA, 30 CFR 77.216(a) will comply with the requirements of MSHA, 30 CFR 77.216 (see R645-301-533.600, R645-301-742.222, and R645-301-742.223).

513.300. Underground development waste, coal processing waste and excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by MSHA and the Division (see R645-301-528.321).

513.400. Refuse piles will meet the requirements of MSHA, 30 CFR 77.214 and 30 CFR 77.215 (see R645-301-536.900).

513.500. Each shaft, drift, adit, tunnel, exploratory hole, entryway or other opening to the surface from the underground will be capped, sealed, backfilled or otherwise properly managed consistent with MSHA, 30 CFR 75.1771 (see R645-301-551).

513.600. Discharges into an underground mine are prohibited, unless specifically approved by the Division after a demonstration that the discharge will meet the approval of MSHA (see R645-301-731.511.4).

513.700. The nature, timing and sequence of the SURFACE COAL MINING AND RECLAMATION ACTIVITIES that propose to mine closer than 500 feet to an active underground mine are jointly approved by the Division and MSHA (see R645-301-523.220).

513.800. Coal mine waste fires will be extinguished in accordance with a plan approved by MSHA and the Division (see R645-301-528.323.1).

514. Inspections. All engineering inspections, excepting those described under R645-301-514.330, will be conducted by a qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer.

514.100. Excess Spoil. The professional engineer or specialist will be experienced in the construction of earth and rock fills and will periodically inspect the fill during construction. Regular inspections will also be conducted during placement and compaction of fill materials.

514.110. Such inspections will be made at least quarterly throughout construction and during critical construction periods. Critical construction periods will include at a minimum:

514.111. Foundation preparation, including the removal of all organic material and topsoil;

514.112. Placement of underdrains and protective filter systems;

514.113. Installation of final surface drainage systems; and

514.114. The final graded and revegetated fill.

514.120. The qualified registered professional engineer will provide a certified report to the Division promptly after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and the R645-301 and R645-302 Rules. The report will include appearances of instability, structural weakness, and other hazardous conditions.

514.130. Certified reports on Drainage System and Protective Filters.

514.131. The certified report on the drainage system and protective filters will include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase will be certified separately.

514.132. Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with R645-301-535.300 and R645-301-745.300, color photographs will be taken of the underdrain as the underdrain system is being formed.

514.133. The photographs accompanying each certified report will be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

514.140. Inspection Reports. A copy of each inspection report will be retained at or near the mine site.

514.200. Refuse Piles. The professional engineer or specialist experienced in the construction of similar earth and waste structures will inspect the refuse pile during construction.

514.210. Regular inspections by the engineer or specialist will also be conducted during placement and compaction of coal mine waste materials. More frequent inspections will be conducted if a danger of harm exists to the public health and safety or the environment. Inspections will continue until the refuse pile has been finally graded and revegetated or until a later time as required by the Division.

514.220. Such inspection will be made at least quarterly throughout construction and during the following critical construction periods:

514.221. Foundation preparation including the removal of all organic material and topsoil;

514.222. Placement of underdrains and protective filter systems;

514.223. Installation of final surface drainage systems; and

514.224. The final graded and revegetated facility.

514.230. The qualified registered professional engineer will provide a certified report to the Division promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and R645 Rules. The report will include appearances of instability, structural weakness, and other hazardous conditions.

514.240. The certified report on the drainage system and protective filters will include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase will be certified separately. The photographs accompanying each certified report will be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

514.250. A copy of each inspection report will be retained at or near the mine site.

514.300. Impoundments.

514.310. Certified Inspection. The professional engineer or specialist experienced in the construction of impoundments will inspect the impoundment.

514.311. Inspections will be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

514.312. The qualified registered professional engineer will promptly, after each inspection, provide to the Division, a certified report that the impoundment has been constructed and maintained as designed and in accordance with the approved plan and the R645 Rules. The report will include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.

514.313. A copy of the report will be retained at or near the mine site.

514.320. Impoundments meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR Sec. 77.216 must be examined in accordance with 30 CFR Sec. 77.216-3. Impoundments not meeting the NRCS Class B or C Criteria for dams in TR-60, or subject to 30 CFR Sec. 77.216, shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for the appearance of structural weakness and other hazardous conditions.

515. Reporting and Emergency Procedures.

515.100. The permit application will incorporate a description of the procedure for reporting a slide. The

requirements for the description are: At any time a slide occurs which may have a potential adverse effect on public, property, health, safety, or the environment, the permittee who conducts the coal mining and reclamation operations will notify the Division by the fastest available means and comply with any remedial measures required by the Division.

515.200. Impoundment Hazards. The permit application will incorporate a description of notification when potential impoundment hazards exist. The requirements for the description are: If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment will promptly inform the Division of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Division will be notified immediately. The Division will then notify the appropriate agencies that other emergency procedures are required to protect the public.

515.300. The permit application will incorporate a description of procedures for temporary cessation of operations as follows:

515.310. Temporary abandonment will not relieve a person of his or her obligation to comply with any provisions of the approved permit.

515.311. Each person who conducts UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will effectively support and maintain all surface access openings to underground operations, and secure surface facilities in areas in which there are no current operations, but operations are to be resumed under an approved permit.

515.312. Each person who conducts SURFACE COAL MINING AND RECLAMATION ACTIVITIES will effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit.

515.320. Before temporary cessation of coal mining and reclamation operations for a period of 30 days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, each person who conducts coal mining and reclamation operations will submit to the Division a notice of intention to cease or abandon operations. This notice will include:

515.321. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, a statement of the exact number of surface acres and the horizontal and vertical extent of subsurface strata which have been in the permit area prior to cessation or abandonment, the extent and kind of reclamation of surface area which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closures and water treatment activities that will continue during the temporary cessation.

515.322. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, a statement of the exact number of acres which will have been affected in the permit area prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.

516. Prevention of Slides in SURFACE COAL MINING AND RECLAMATION ACTIVITIES. An undisturbed natural barrier will be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the Division as is needed to assure stability. The barrier will be retained in place to prevent slides and erosion.

520. Operation Plan.

521. General. The applicant will include a plan, with maps, cross sections, narrative, descriptions, and calculations indicating how the relevant requirements are met. The permit application will describe and identify the lands subject to coal mining and reclamation operations over the estimated life of the operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought.

521.100. Cross Sections and Maps. The application will include cross sections, maps and plans showing all the relevant information required by the Division, to include, but not be limited to:

521.110. Previously Mined Areas. These maps will clearly show:

521.111. The location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent areas. The map will be prepared and certified according to R645-301-512; and

521.112. The location and extent of existing or previously surface-mined areas within the proposed permit area. The maps will be prepared and certified according to R645-301-512.

521.120. Existing Surface and Subsurface Facilities and Features. These maps will clearly show:

521.121. The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

521.122. The location of surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

521.123. Each public road located in or within 100 feet of the proposed permit area;

521.124. The location and size of existing areas of spoil, waste, coal development waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area. The map will be prepared and certified according to R645-301-512; and

521.125. The location of each sedimentation pond, permanent water impoundment, coal processing waste bank and coal processing waste dam and embankment in accordance with R645-301-512.100, R645-301-512.230, R645-301-521.143, R645-301-521.169, R645-301-528.340, R645-301-531, R645-301-533.600, R645-301-533.700, R645-301-535.140 through R645-301-535.152, R645-301-536.600, R645-301-536.800, R645-301-542.500, R645-301-732.210, and R645-301-733.100.

521.130. Landowners and Right of Entry and Public

Interest Maps. These maps and cross sections will clearly show:

521.131. All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

521.132. The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin coal mining and reclamation operations; and

521.133. The measures to be used to ensure that the interests of the public and landowners affected are protected if, under R645-103-234, the applicant seeks to have the Division approve:

521.133.1. Conducting the proposed coal mining and reclamation operations within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

521.133.2. Relocating a public road.

521.140. Mine Maps and Permit Area Maps. These maps and/or cross-section drawings will clearly indicate:

521.141. The boundaries of all areas proposed to be affected over the estimated total life of the coal mining and reclamation operations, with a description of size, sequence and timing of the mining of subareas for which it is anticipated that additional permits will be sought; the coal mining and reclamation operations to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations;

521.142. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the underground workings and the location and extent of areas in which planned-subsidence mining methods will be used and which includes all areas where the measures will be taken to prevent, control, or minimize subsidence and subsidence-related damage (refer to R645-301-525); and

521.143. The proposed disposal sites for placing underground mine development waste and excess spoil generated at surface areas affected by surface operations and facilities for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and the proposed disposal site and design of the spoil disposal structures for purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES according to R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

521.150. Land Surface Configuration Maps. These maps will clearly indicate sufficient slope measurements or surface contours to adequately represent the existing land surface configuration of the proposed permit area for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES and the area affected by surface operations and facilities for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES measured and recorded according to the following:

521.151. Each measurement will consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed, or, where this is impractical, at locations specified by the Division. Maps will be prepared and certified according to R645-301-512; and

521.152. Where the area has been previously mined, the measurements will extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the Division to be representative of the premining configuration of the land. Maps will be prepared and certified according to R645-301-512.

521.160. Maps and Cross Sections of the Proposed Features for the Proposed Permit Area. These maps and cross sections will clearly show:

521.161. Buildings, utility corridors, and facilities to be used;

521.162. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

521.163. Each area of land for which a performance bond or other equivalent guarantee will be posted under R645-301-800;

521.164. Each coal storage, cleaning and loading area. The map will be prepared and certified according to R645-301-512;

521.165. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area. The map will be prepared and certified according to R645-301-512;

521.166. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

521.167. Each explosive storage and handling facility;

521.168. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, each air pollution collection and control facility; and

521.169. Each proposed coal processing waste bank, dam, or embankment. The map will be prepared and certified according to R645-301-512.

521.170. Transportation Facilities Maps. Each permit application will describe each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description will include a map, appropriate cross sections, and specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, drainage structure, and each stream ford that is used as a temporary route.

521.180. Support facilities. Each permit applicant will submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings will include a map, appropriate cross sections, design drawings, and specifications to demonstrate compliance with R645-301-526.220 through R645-301-526.222 for each facility.

521.190. Other relevant information required by the Division.

521.200. Signs and Markers Specifications. Signs and markers will:

521.210. Be posted, maintained, and removed by the person who conducts the coal mining and reclamation operations;

521.220. Be a uniform design that can be easily seen and

read; be made of durable material; and conform to local laws and regulations;

521.230. Be maintained during all activities to which they pertain;

521.240. Mine and Permit Identification Signs.

521.241. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, identification signs will be displayed at each point of access from public roads to areas of surface operations and facilities on permit areas;

521.242. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, identification signs will be displayed at each point of access to the permit area from public roads;

521.243. Show the name, business address, and telephone number of the permittee who conducts coal mining and reclamation operations and the identification number of the permanent program permit authorizing coal mining and reclamation operations; and

521.244. Be retained and maintained until after the release of all bonds for the permit area;

521.250. Perimeter Markers.

521.251. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the perimeter of all areas affected by surface operations or facilities before beginning mining activities will be clearly marked; or

521.252. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, the perimeter of a permit area will be clearly marked before the beginning of surface mining activities;

521.260. Buffer Zone Markers.

521.261. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, signs will be erected to mark buffer zones as required under R645-301-731.600 and will be clearly marked to prevent disturbance by surface operations and facilities; or

521.262. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, buffer zones will be marked along their boundaries as required under R645-301-731.600; and

521.270. Topsoil Markers. Markers will be erected to mark where topsoil or other vegetation-supporting material is physically segregated and stockpiled as required under R645-301-234.

522. Coal Recovery. The permit application will include a description of the measures to be used to maximize the use and conservation of the coal resource. The description will assure that coal mining and reclamation operations are conducted so as to maximize the utilization and conservation of the coal, while utilizing the best technology currently available to maintain environmental integrity, so that reaffecting the land in the future through coal mining and reclamation operations is minimized.

523. Mining Method(s). Each application will include a description of the mining operation proposed to be conducted during the life of the mine within the proposed permit area, including, at a minimum, a narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage and the major equipment to be used for all aspects of those operations.

523.100. SURFACE COAL MINING AND RECLAMATION ACTIVITIES proposed to be conducted within the permit area within 500 feet of an underground mine will be described to indicate compliance with R645-301-523.200.

523.200. No SURFACE COAL MINING AND RECLAMATION ACTIVITIES will be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that:

523.210. The operations result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public; and

523.220. The nature, timing, and sequence of the activities that propose to mine closer than 500 feet to an active underground mine are jointly approved by the Division and MSHA.

524. Blasting and Explosives. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, each permit application will contain a blasting plan for the proposed permit area explaining how the applicant will comply with R645-301-524. This plan will include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling the adverse effects of blasting operations. Each blasting plan will also contain a description of any system to be used to monitor compliance with the standards of R645-301.524.600 including the type, capability, and sensitivity of any blast-monitoring equipment and proposed procedures and locations of monitoring. Blasting operations conducted within 500 feet of active underground mines require approval of MSHA. Blasts that use more than five pounds of explosive or blasting agent will be conducted according to the schedule required under R645-301-524.400. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, R645-301-524.100 through R645-301-524.700 apply to surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

524.100. Blaster Certification. The steps taken to achieve compliance with the blaster certification program must be described in the permit application.

524.110. After July 28, 1987, all surface blasting operations incident to underground mining in Utah will be conducted under the direction of a certified blaster.

524.120. Certificates of blaster certification will be carried by blasters or will be on file at the permit area during blasting operations.

524.130. A blaster and at least one other person will be present at the firing of a blast.

524.140. Persons responsible for blasting operations at a blasting site will be familiar with the blasting plan and site-specific performance standards and give on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

524.200. Unless approved by the Division under R645-301-524.220, the blast design must be described in the permit application. The design requirements are:

524.210. An anticipated blast design will be submitted for

all blasts if blasting operations will be conducted within:

524.211. 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

524.212. 500 feet of an active or abandoned underground mine;

524.220. The blast design may be presented as part of a permit application or at a time, before the blast, if approved by the Division;

524.230. The blast design will contain sketches of the drill patterns, delay periods, and decking and will indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in R645-301-524.600;

524.240. The blast design will be prepared and signed by a certified blaster; and

524.250. The Division may require changes to the design submitted.

524.300. The preblasting survey must be described in the permit application. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES preblasting surveys are required for blasts that use more than five pounds of blasting agent or explosives. The requirements are:

524.310. At least 30 days before initiation of blasting, the operator will notify, in writing, all residents or owners of dwellings or other structures located within one-half mile of the permit area how to request a preblasting survey;

524.320. A resident or owner of a dwelling or structure within one-half mile of any part of the permit area may request a preblasting survey. This request will be made, in writing, directly to the operator or to the Division, who will promptly notify the operator. The operator will promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations will be performed by the operator if requested by the resident or owner;

524.330. The operator will determine the condition of the dwelling or structure and will document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data;

524.340. The written report of the survey will be signed by the person who conducted the survey. Copies of the report will be promptly provided to the Division and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he or she may submit to both the operator and the Division a detailed description of the specific areas of disagreement; and

524.350. Any surveys requested more than ten days before the planned initiation of blasting will be completed by the operator before the initiation of blasting.

524.400. The schedule of blasts will be described in the permit application:

524.410. Unscheduled blasts may be conducted only where public or operator health and safety so requires and for emergency blasting actions. When an operator conducts an unscheduled surface blast incidental to coal mining and reclamation operations, the operator, using audible signals, will notify residents within one-half mile of the blasting site and document the reason in accordance with R645-301-524.760;

524.420. All blasting will be conducted between sunrise and sunset unless nighttime blasting is approved by the Division based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The Division may specify more restrictive time periods for blasting;

524.430. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the operator will notify, in writing, residents within one-half mile of the blasting site and local governments of the proposed times and locations of blasting operations. Such notice of times that blasting is to be conducted may be announced weekly, but in no case less than 24 hours before blasting will occur;

524.440. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, the operator will conduct blasting operations at times approved by the Division and announced in the blasting schedule. The Division may limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare;

524.450. Blasting Schedule Publication and Distribution. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the operator will:

524.451. Publish the blasting schedule in a newspaper of general circulation in the locality of the blasting site at least ten days, but not more than 30 days, before beginning a blasting program;

524.452. Distribute copies of the schedule to local governments and public utilities and to each local residence within one-half mile of the proposed blasting site described in the schedule; and

524.453. Republish and redistribute the schedule at least every 12 months and revise and republish the schedule at least ten days, but not more than 30 days, before blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from the prior announcement; and

524.460. Blasting Schedule Contents. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the blasting schedule will contain, at a minimum:

524.461. Name, address, and telephone number of operator;

524.462. Identification of the specific areas in which blasting will take place;

524.463. Dates and time periods when explosives are to be detonated;

524.464. Methods to be used to control access to the blasting area; and

524.465. Type and patterns of audible warning and all-clear signals to be used before and after blasting.

524.500. The blasting signs, warnings, and access control must be described in the permit application.

524.510. Blasting Signs. Blasting signs will meet the specifications of R645-301-521.200. The operator will:

524.511. Conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public-road right-of-way, and at the point where any other road provides access to the blasting area; and

524.512. At all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use", which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

524.520. Warnings. Warning and all-clear signals of different character or pattern that are audible within a range of one-half mile from the point of the blast will be given. Each person within the permit area and each person who resides or regularly works within one-half mile of the permit area will be notified of the meaning of the signals in the blasting schedule for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES and blasting notification required by R645-301-524.430 for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

524.530. Access Control. Access within the blasting areas will be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the operator has reasonably determined that:

524.531. No unusual hazards, such as imminent slides or undetonated charges, exist; and

524.532. Access to and travel within the blasting area can be safely resumed.

524.600. The control of adverse blasting effects must be described in the permit application. The requirements are:

524.610. General Requirements. Blasting will be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

524.620. Airblast Limits.

524.621. Airblast will not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in R645-301-524.690.

TABLE

Lower Frequency Limit of Measuring System, HZ(+3dB)	Maximum Level dB
0.1 Hz or lower - flat response(1)	134 peak
2 Hz or lower - flat response	133 peak
6 Hz or lower - flat response	129 peak
C-weighted - slow response(1)	105 peak dBC

(1)Only when approved by the Division.

524.622. If necessary to prevent damage, the Division may specify lower maximum allowable airblast levels than those of R645-301-524.621 for use in the vicinity of a specific blasting operation.

524.630. Monitoring.

524.631. The operator will conduct periodic monitoring to ensure compliance with the airblast standards. The Division may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

524.632. The measuring systems used will have an upper-end flat-frequency response of at least 200 Hz.

524.633. Flyrock. Flyrock traveling in the air or along the ground will not be cast from the blasting site - more than one-half the distance to the nearest dwelling or other occupied structure; beyond the area of control required under R645-301-524.530; or beyond the permit boundary.

524.640. Ground Vibration.

524.641. General. In all blasting operations, except as otherwise authorized in R645-301-524.690, the maximum ground vibration will not exceed the values approved by the Division. The maximum ground vibration for protected structures listed in R645-301-524.642 will be established in accordance with either the maximum peak-particle-velocity limits of R645-301-524.642 and R645-301-524.643, the scaled-distance equation of R645-301-524.650, the blasting-level chart of R645-301-524.660, or by the Division under R645-301-524.670. All structures in the vicinity of the blasting area, not listed in R645-301-524.642, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines will be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator and approved by the Division before the initiation of blasting.

524.642. Maximum Peak-Particle Velocity. The maximum ground vibration will not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

TABLE
EXPLOSIVES

Distance (D) from Blast Site in feet	Maximum allowable Particle Velocity (Vmax) for ground vibration, in inches/second(1)	Scaled distance factor to be applied without seismic monitoring(2) (Ds)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

(1)Ground vibration will be measured as the particle velocity. Particle velocity will be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity will apply to each of the three measurements.

(2)Applicable in the scaled-distance equation of R645-301-524.651.

524.643. A seismographic record will be provided for each blast.

524.650. Scaled-distance equation.

524.651. An operator may use the scaled-distance equation, $W=(D/Ds)^2$, to determine the allowable charge weight of explosives to be detonated in any eight-millisecond period, without seismic monitoring: where W=the maximum weight of explosives, in pounds: D=the distance, in feet, from the blasting site to the nearest protected structure: and Ds=the scaled-distance factor, which may initially be approved by the Division using the values for scaled-distance factor listed in R645-301-524.642.

524.652. The development of a modified scaled-distance factor may be authorized by the Division on receipt of a written

request by the operator, supported by seismographic records of blasting at the mine site. The modified scaled-distance factor will be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of R645-301-524.642, at a 95-percent confidence level.

524.660. Blasting-Level-Chart.

524.661. An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

(Figure 1, showing maximum allowable ground particle velocity at specified frequencies, is incorporated by reference. Figure 1 may be viewed at 30 CFR 817.67 or at the Division of Oil, Gas and Mining State Office.)

524.662. If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels will be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records will be approved by the Division before application of this alternative blasting criterion.

524.670. The maximum allowable ground vibration will be reduced by the Division beyond the limits otherwise provided R645-301-524.640, if determined necessary to provide damage protection.

524.680. The Division may require an operator to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

524.690. The maximum airblast and ground-vibration standards of R645-301-524.620 through R645-301-524.632 and R645-301-524.640 through R645-301-524.680 will not apply at the following locations: At structures owned by the permittee and not leased to another person; and at structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the Division before blasting.

524.700. Records of Blasting Operations. The permit application will incorporate a description of the blasting records to be maintained at the mine site for at least three years and upon request, make blasting records available for inspection by the Division or the public. Blasting records will contain the following information:

524.710. A record, including:

524.711. Name of the operator conducting the blast;

524.712. Location, date, and time of the blast; and

524.713. Name, signature, and certification number of the blaster conducting the blast; and

524.720. Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in R645-301-524.690;

524.730. Weather conditions, including those which may cause possible adverse blasting effects;

524.740. A record of the blast, including:

524.741. Type of material blasted;

524.742. Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern;

524.743. Diameter and depth of holes;

524.744. Types of explosives used;

524.745. Total weight of explosives used per hole;

524.746. The maximum weight of explosives detonated in an eight-millisecond period;

524.747. Initiation system;

524.748. Type and length of stemming; and

524.749. Mats or other protections used;

524.750. If required, a record of seismographic and airblast information, which will include:

524.751. Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

524.752. Exact location of instrument and the date, time, and distance from the blast;

524.753. Name of the person and firm taking the reading;

524.754. Name of the person and firm analyzing the seismographic record; and

524.755. The vibration and/or airblast level recorded; and

524.760. The reasons and conditions for each unscheduled blast.

524.800. Each operator will comply with all appropriate Utah and federal laws and regulations in the use of explosives.

525. Subsidence control plan.

525.100. Pre-subsidence survey. Each application for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will include:

525.110. A map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the Division, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of State-appropriated water that could be contaminated, diminished, or interrupted by subsidence.

525.120. A narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt State-appropriated water supplies.

525.130. A survey of the condition of all non-commercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw; as well as a survey of the quantity and quality of all State-appropriated water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner, in writing, of the effect that denial of access will have as described in R645-301-525. The applicant must pay for any technical assessment or engineering evaluation used to determine the pre-mining condition or value of such non-commercial buildings or occupied residential dwellings and structures related thereto and the quantity and quality of State-appropriated water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner, the water conservancy district, if any, where the mine is located, and to the Division.

525.200. Protected areas.

525.210. Unless excepted by R645-301-525.213,

UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will not be conducted beneath or adjacent to:

525.211. Public buildings and facilities;

525.212. Churches, schools, and hospitals;

525.213. Impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities; and

525.214. If the Division determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

525.220. If subsidence causes material damage to any of the features or facilities covered by R645-301-525.210, the Division may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

525.230. The Division will suspend coal mining and reclamation operations under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

525.240. Within a schedule approved by the Division, the operator will submit a detailed plan of the underground workings. The detailed plan will include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measure taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the Division. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of R645-300-124.

525.300. Subsidence control.

525.310. Measures to prevent or minimize damage.

525.311. The permittee will either adopt measures consistent with known technology that prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands or adopt mining technology that provides for planned subsidence in a predictable and controlled manner.

525.312. If a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the permittee must take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to non-commercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material damage to such structures are not required if:

525.312.1. The permittee has the written consent of their owners or

525.312.2. Unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair.

525.313. Nothing in this part prohibits the standard method of room-and-pillar mining.

525.400. Subsidence control plan contents. If the survey conducted under R645-301-525.100 shows that no structures, or State-appropriated water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, and no contamination, diminution, or interruption of such water supplies would occur as a result of mine subsidence, and if the Division agrees with this conclusion, no further information need be provided under this section. If the survey shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution, or interruption of state-appropriated water supplies, or if the Division determines that damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application must include a subsidence control plan that contains the following information:

525.410. A description of the method of coal removal, such as longwall mining, room-and-pillar removal or hydraulic mining, including the size, sequence and timing of the development of underground workings;

525.420. A map of the underground workings that describes the location and extent of the areas in which planned-subsidence mining methods will be used and that identifies all areas where the measures described in 525.440, 525.450, and 525.470 will be taken to prevent or minimize subsidence and subsidence-related damage; and, when applicable, to correct subsidence-related material damage;

525.430. A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlaying strata, that affect the likelihood or extent of subsidence and subsidence-related damage;

525.440. A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce or correct material damage in accordance with R645-301-525.500;

525.450. Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, such as, but not limited to:

525.451. Backstowing or backfilling of voids;

525.452. Leaving support pillars of coal;

525.453. Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place; and

525.454. Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface;

525.460. A description of the anticipated effects of planned subsidence, if any;

525.470. For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to non-commercial buildings and occupied residential dwellings and

structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair;

525.480. A description of the measures to be taken in accordance with R645-301-731.530 and R645-301-525.500 to replace adversely affected State-appropriated water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures; and

525.490. Other information specified by the Division as necessary to demonstrate that the operation will be conducted in accordance with R645-301-525.300.

525.500. Repair of damage.

525.510. Repair of damage to surface lands. The permittee must correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence damage.

525.520. Repair or compensation for damage to non-commercial buildings and dwellings and related structures. The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If repair option is selected, the permittee must fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The permittee may provide compensation by the purchase, before mining, of a non-cancelable premium-prepaid insurance policy. The requirements of this paragraph apply only to subsidence-related damage caused by underground coal mining and reclamation activities conducted after October 24, 1992.

525.530. Repair or compensation for damage to other structures. The permittee shall either correct material damage resulting from subsidence caused to any structures or facilities not protected by paragraph 525.520 by repairing the damage or compensate the owner of the structures or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase before mining of a non-cancelable premium-prepaid insurance policy.

525.540. Rebuttable presumption of causation by subsidence.

525.541. Rebuttable presumption of causation for damage within angle of draw. If damage to any non-commercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting an angle of draw equal to that used for that particular mine's compliance with R645-301 from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption exists that the permittee caused the damage. This presumption will normally apply to a 30 degree angle of draw from the vertical, however, the Division may amend the applicable angle of draw for a particular mine through the process described in R645-301-525.542.

525.542. Approval of site-specific angle of draw. A permittee or permit applicant may request that the presumption apply to an angle of draw different than 30 degrees. To establish a site-specific angle of draw, an applicant must demonstrate and the Division must determine in writing that the proposed angle of draw has a more reasonable basis than 30 degrees and is based on a site- specific geotechnical analysis of the potential surface impacts of the mining operation.

525.543. No presumption where access for pre-subsidence survey is denied. If the permittee was denied access to the land or property for the purpose of conducting the pre-subsidence survey in accordance with R645-301-525.130 no rebuttable presumption will exist.

525.544. Rebuttal of presumption. The presumption will be rebutted if, for example, the evidence establishes that: The damage predated the mining in question; the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence; or the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.

525.545. Information to be considered in determination of causation. In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the Division.

525.550. Adjustment of bond amount for subsidence damage. When subsidence-related material damage to land, structures or facilities protected under R645-301-525.500 through R645-301-525.530 occurs, or when contamination, diminution, or interruption to a water supply protected under Sec. R645-301-731.530 occurs, the Division must require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, or in the amount of the estimated cost to replace the State-appropriated water supply if the permittee will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The Division may extend the 90-day time frame, but not to exceed one year, if the permittee demonstrates and the Division finds in writing that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the State-appropriated water supply, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence-related material damage to lands or protected structures, or the replacement of State-appropriated water supply.

525.600. Compliance. The operator will comply with all provisions of the approved subsidence control plan.

525.700. Public Notice of Proposed Mining. At least six months prior to mining, or within that period if approved by the Division, the underground mine operator will mail a notification to the water conservancy district, if any, in which the mine is located and to all owners and occupants of surface property and

structures above the underground workings. The notification will include, at a minimum, identification of specific areas in which mining will take place, dates that specific areas will be undermined, and the location or locations where the operator's subsidence control plan may be examined.

526. Mine Facilities. The permit application will include a narrative explaining the construction, modification, use, maintenance and removal of the following facilities (unless retention of such facility is necessary for the postmining land use as specified under R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900:

526.100. Mine Structures and Facilities.

526.110. Existing Structures. A description of each existing structure proposed to be used in connection with or to facilitate the coal mining and reclamation operation. The description will include:

526.111. Location;

526.112. Plans or photographs of the structure which describe or show its current condition;

526.113. Approximate dates on which construction of the existing structure was begun and completed;

526.114. A showing, including relevant monitoring data or other evidence, how the structure meets the requirements of R645-301;

526.115. A compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate coal mining and reclamation operations. The compliance plan will include:

526.115.1. Design specifications for the modification or reconstruction of the structure to meet the design standards of R645-301;

526.115.2. A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

526.115.3. A schedule for monitoring the structure during and after modification or reconstruction to ensure that the requirements of R645-301 are met; and

526.115.4. A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

526.116. The measures to be used to ensure that the interests of the public and landowners affected are protected if the applicant seeks to have the Division approve:

526.116.1. Conducting the proposed coal mining and reclamation operations within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

526.116.2. Relocating a public road;

526.200. Utility Installation and Support Facilities.

526.210. The utility installations description must state that all coal mining and reclamation operations will be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines, railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the Division.

526.220. The support facilities description must state that support facilities will be operated in accordance with a permit issued for the mine or coal preparation plant to which it is incident or from which its operation results. Plans and drawings for each support facility to be constructed, used, or maintained within the proposed permit area will include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate how each facility will comply with applicable performance standards. In addition to the other provisions of R645-301, support facilities will be located, maintained, and used in a manner that:

526.221. Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and

526.222. To the extent possible using the best technology currently available - minimizes damage to fish, wildlife, and related environmental values; and minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions will not be in excess of limitations of Utah or Federal law;

526.300. Water pollution control facilities; and

526.400. For SURFACE COAL MINING AND RECLAMATION ACTIVITIES, air pollution control facilities.

527. Transportation Facilities.

527.100. The plan must classify each road.

527.110. Each road will be classified as either a primary road or an ancillary road.

527.120. A primary road is any road which is:

527.121. Used for transporting coal or spoil;

527.122. Frequently used for access or other purposes for a period in excess of six months; or

527.123. To be retained for an approved postmining land use.

527.130. An ancillary road is any road not classified as a primary road.

527.200. The plan must include a detailed description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description will include a map, appropriate cross sections, and the following:

527.210. Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;

527.220. Measures to be taken to obtain Division approval for alteration or relocation of a natural drainageway under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-527.240, R645-301-534.100, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, and R645-301-752.200;

527.230. A maintenance plan describing how roads will be maintained throughout their life to meet the design standards throughout their use.

527.240. A commitment that if a road is damaged by a catastrophic event, such as a flood or earthquake, the road will be repaired as soon as practical after the damage has occurred.

527.250. A report of appropriate geotechnical analysis, where approval of the Division is required for alternative specifications, or for steep cut slopes.

528. Handling and Disposal of Coal, Overburden, Excess Spoil, and Coal Mine Waste. The permit application will include a narrative explaining the construction, modification,

use, maintenance, and removal of the following facilities (unless retention of such facility is necessary for the postmining land use as specified under R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900):

528.100. Coal removal, handling, storage, cleaning, and transportation areas and structures;

528.200. Overburden;

528.300. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

528.310. Excess Spoil. Excess spoil will be placed in designated disposal areas within the permit area, in a controlled manner to ensure mass stability and prevent mass movement during and after construction. Excess spoil will meet the design criteria of R645-301-535. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, the permit application must include a description of the proposed disposal site and the design of the spoil disposal structures according to R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

528.320. Coal Mine Waste. All coal mine waste will be placed in new or existing disposal areas within a permit area which are approved by the Division for this purpose. Coal mine waste will meet the design criteria of R645-301-536, however, placement of coal mine waste by end or side dumping is prohibited.

528.321. Return of Coal Processing Waste to Abandoned Underground Workings. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, each plan will describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the Division and MSHA under R645-301-536.520 and meet the design criteria of R645-301-536.700.

528.322. Refuse Piles. Each pile will meet the requirements of MSHA, 30 CFR 77.214 and 30 CFR 77.215, meet the design criteria of R645-301-210, R645-301-512.230, R645-301-513.400, R645-301-514.200, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-536.900, R645-301-542.730, R645-301-553.250, R645-301-746.100, R645-301-746.200, and any other applicable requirements.

528.323. Burning and Burned Waste Utilization.

528.323.1. Coal mine waste fires will be extinguished by the person who conducts coal mining and reclamation operations, in accordance with a plan approved by the Division and MSHA. The plan will contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, will be involved in the extinguishing operations.

528.323.2. No burning or burned coal mine waste will be removed from a permitted disposal area without a removal plan approved by the Division. Consideration will be given to potential hazards to persons working or living in the vicinity of the structure.

528.330. Noncoal Mine Waste.

528.331. Noncoal mine wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities will be placed and stored in a controlled manner in a designated portion of the permit area.

528.332. Final disposal of noncoal mine wastes will be in a designated disposal site in the permit area or a State-approved solid waste disposal area. Disposal sites in the permit area will be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes will be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two feet of soil cover will be placed over the site, slopes, stabilized, and revegetation accomplished in accordance with R645-301-244.200 and R645-301-353 through R645-301-357. Operation of the disposal site will be conducted in accordance with all local, Utah, and Federal requirements.

528.333. At no time will any noncoal mine waste be deposited in a refuse pile or impounding structure, nor will any excavation for a noncoal mine waste disposal site be located within eight feet of any coal outcrop or coal storage area.

528.334. Notwithstanding any other provision to the R645 Rules, any noncoal mine waste defined as "hazardous" under 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580, as amended) and 40 CFR Part 261 will be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.

528.340. Underground Development Waste. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES the permit application must include a description of the proposed disposal methods for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities according to R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-536.300, R645-301-536.600, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

528.350. The permit application will include a description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with R645-301-528.330, R645-301-537.200, R645-301-542.740, R645-301-553.100 through R645-301-553.600, R645-301-553.900, and R645-301-747 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials; and

528.400. Dams, embankments and other impoundments.

529. Management of Mine Openings. The permit application will include a description of the measures to be used to seal or manage mine openings within the proposed permit

area.

529.100. Each shaft or other exposed underground opening will be cased, lined, or otherwise managed as approved by the Division. If these openings are uncovered or exposed by coal mining and reclamation operations within the permit area they will be permanently closed unless approved for water monitoring or otherwise managed in a manner approved by the Division.

529.200. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES:

529.210. Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, will be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices will be periodically inspected and maintained in good operating condition by the person who conducts the activity.

529.220. Each shaft and underground opening which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings will be temporarily sealed until actual use.

529.300. R645-301-529 does not apply to holes drilled and used for blasting, in the area affected by surface operations.

529.400. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, each exposed underground opening which has been identified in the approved permit application for use to return coal processing waste to underground workings will be temporarily sealed before use and protected during use by barricades, fences, or other protective devices approved by the Division. These devices will be periodically inspected and maintained in good operating condition by the person who conducts the activity.

530. Operational Design Criteria and Plans.

531. General. Each permit application will include a general plan and detailed design plans for each proposed siltation structure, water impoundment, and coal processing waste bank, dam or embankment within the proposed permit area. Each general plan will describe the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations, if underground mining has occurred.

532. Sediment Control. The permit application will describe designs for sediment control. Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas will reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

532.100. Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in R645-301-353.200; and

532.200. Stabilizing the backfilled material to promote a reduction of the rate and volume of runoff in accordance with the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600, and R645-301-553.900.

533. Impoundments.

533.100. An Impoundment meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR Sec. 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and have a seismic safety factor of at least 1.2.

533.110 Impoundments not included in 533.100, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of R645-301-733.210.

533.200. Foundations. Foundations for temporary and permanent impoundments must be designed so that:

533.210. Foundations and abutments for an impounding structure are stable during all phases of construction and operation and are designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR Sec. 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability; and

533.220. All vegetative and organic materials will be removed and foundations excavated and prepared to resist failure. Cutoff trenches will be installed if necessary to ensure stability.

533.300. Slope protection will be provided to protect against surface erosion at the site and protect against sudden drawdown.

533.400. Faces of embankments and surrounding areas will be vegetated except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

533.500. The vertical portion of any remaining highwall will be located far enough below the low-water line along the full extent of highwall to provide adequate safety and access for the proposed water users.

533.600. Impoundments meeting the criteria of MSHA, 30 CFR 77.216(a) will comply with the requirements of MSHA, 30 CFR 77.216 and R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will also be submitted to the Division as part of the permit application.

533.610. Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR-60) shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). The document entitled "Earth Dams and Reservoirs", published in October, 1985, is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia

22161, order No. PB 87-157509/AS. Copies may be inspected at the Division of Oil Gas and Mining Offices, 1594 West North Temple, Salt Lake City, Utah 84114 or at the Division of Administrative Rules, Archives Building, Capitol Hill Complex, Salt Lake City , Utah 84114-1021. Each detailed design plan for a structure that meets or exceeds the size or other criteria of MSHA, 30 CFR Sec. 77.216(a), shall:

533.611 Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

533.612 Include any geotechnical investigation, design, and construction requirements for the structure;

533.613 Describe the operation and maintenance requirements for each structure; and

533.614 Describe the timetable and plans to remove each structure, if appropriate.

533.620. If the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR Sec. 77.216(a), each plan under R645-301-742.200, 733.200, or 536.820 shall include a stability analysis of the structure. The stability analysis shall at a minimum include strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

533.700. Plans.

533.710 Each detailed design plan for structures not included in 533.610 shall:

533.711 Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, except that all coal processing waste dams and embankments covered by R645-301-536 and R645-301-746.200 shall be certified by a qualified, registered, professional engineer;

533.712 Include any design and construction requirements for the structure, including any required geotechnical information;

533.713 Describe the operation and maintenance requirements for each structure; and

533.714 Describe the timetable and plans to remove each structure, if appropriate.

534. Roads. The permit application will describe designs for roads.

534.100. Roads will be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:

534.110. Prevent or control damage to public or private property;

534.120. Use nonacid- or nontoxic-forming substances in road surfacing; and

534.130. Have, at a minimum, a static safety factor of 1.3 for all embankments.

534.140. Have a schedule and plan to remove and reclaim each road that would not be retained under an approved postmining land use.

534.150. Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.

534.200. To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and reconstruction of roads will incorporate appropriate limits for grade, width, surface materials, and any necessary design criteria established by the Division.

534.300. Primary Roads. Primary roads will meet the requirements of R645-301-358, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-542.600, R645-301-542.600, and R645-301-762, any necessary design criteria established by the Division, and the following requirements. Primary roads will:

534.310. Be located, insofar as practical, on the most stable available surfaces;

534.320. Be surfaced with rock, crushed gravel, asphalt, or other material approved by the Division as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road;

534.330. Be routinely maintained to include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. It will also include revegetation, brush removal, and minor reconstruction of road segments as necessary; and

534.340. Have culverts that are designed, installed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

535. Spoil. The permit application will describe designs for spoil placement and disposal.

535.100. Disposal of Excess Spoil. Excess spoil will be placed in designated disposal areas within the permit area in a controlled manner. The fill and appurtenant structures will be designed using current, prudent engineering practices and will meet any design criteria established by the Division.

535.110. The fill will be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction. The fill will:

535.111. Be located on the most moderately sloping and naturally stable areas available, as approved by the Division, and be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement;

535.112. Be the subject of sufficient foundation investigations. Any necessary laboratory testing of foundation material, will be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions will take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures; and

535.113. Incorporate keyway cuts (excavations to stable bedrock) or rock toe buttresses to ensure stability where the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the Division based on local conditions. Where the toe of the spoil rests on a downslope, stability analyses will be performed in accordance with R645-301-535.150 to determine the size of rock toe buttresses and keyway cuts.

535.120. Excess spoil may be disposed of in underground

mine workings, but only in accordance with a plan approved by the Division and MSHA under R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243.

535.130. Placement of Excess Spoil. Excess spoil will be transported and placed in a controlled manner in horizontal lifts not exceeding four feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings: and covered with topsoil or substitute material in accordance with R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243. The Division may approve a design which incorporates placement of excess spoil in horizontal lifts other than four feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

535.140. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the design of the spoil disposal structure will include the results of geotechnical investigations as follows:

535.141. The character of bedrock and any adverse geologic conditions in the disposal area;

535.142. A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site;

535.143. A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

535.144. A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

535.145. A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data will be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

535.150. If for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, under R645-301-535.112 and R645-301-535.113, rock-toe buttresses or key-way cuts are required, the application will include the following:

535.151. The number, location, and depth of borings or test pits which will be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

535.152. Engineering specifications utilized to design the rock-toe buttress or key-way cuts which will be determined in accordance with R645-301-535.145.

535.200. Disposal of Excess Spoil: Valley Fills/Head-of-Hollow Fills. Valley fills and head-of-hollow fills will meet the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100, and these additional requirements.

535.210. Rock-core chimney drains may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill.

535.220. The alternative rock-core chimney drain system will be incorporated into the design and construction of the fill as follows:

535.221. The fill will have along the vertical projection of the main buried channel or rill a vertical core of durable rock at least 16 feet thick which will extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains will connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and rock core will be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains will meet the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400;

535.222. A filter system to ensure the proper long-term functioning of the rock core will be designed and constructed using current, prudent engineering practices; and

535.223. Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill will be 33h:1v (three percent). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case will this pocket or sump have a potential capacity for impounding more than 10,000 cubic feet of water. Terraces on the fill will be graded with a three to five percent grade toward the fill and a one percent slope toward the rock core.

535.300. Disposal of Excess Spoil: Durable Rock Fills. The Division may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, provided that:

535.310. Except as provided under R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400 are met;

535.320. The excess spoil consists of at least 80 percent, by volume, durable, nonacid- and nontoxic-forming rock (e.g., sandstone or limestone) that does not slake in water and will not degrade to soil material. Where used, noncemented clay shale, clay spoil, soil or other nondurable excess spoil material will be mixed with excess durable rock spoil in a controlled manner such that no more than 20 percent of the fill volume, as

determined by tests performed by a registered engineer and approved by the Division, is not durable rock;

535.330. The fill is designed to attain a minimum long-term static safety factor of 1.5, and an earthquake safety factor of 1.1; and

535.340. The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met.

535.400. Disposal of Excess Spoil: Preexisting Benches. Disposal of excess spoil on preexisting benches may be approved by the Division provided that R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-535.100, R645-301-535.112 through R645-301-535.130, R645-301-535.400, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, and R645-301-745.400 are met, and the following requirements:

535.410. Excess spoil will be placed only on the solid portion of the preexisting bench;

535.420. The fill will be designed, using current, prudent engineering practices, to attain a long-term static safety factor of 1.3 for all portions of the fill;

535.430. The preexisting bench will be backfilled and graded to: Achieve the most moderate slope possible which does not exceed the angle of repose, and eliminate the highwall to the maximum extent technically practical; and

535.440. Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the Division provided that:

535.441. The gravity transport courses are determined on a site-specific basis by the operator as part of the permit application and approved by the Division to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;

535.442. All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;

535.443. A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm; and

535.444. Excess spoil will not be allowed on the downslope below the upper bench except on designated gravity transport courses properly prepared according to R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243. Upon completion of the fill, no excess spoil will be allowed to remain on the designated gravity transport course between the two benches and each transport course will be reclaimed in accordance with the requirements of R645-301 and R645-302.

535.500. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, spoil resulting from faceup operations for underground coal mine development may be placed at drift entries as part of a cut and fill structure, if the structure is less than 400 feet in horizontal length, and designed in accordance with R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

536. Coal Mine Waste. The permit application will include designs for placement of coal mine waste in new or existing disposal areas within approved portions of the permit area. Coal mine waste will be placed in a controlled manner and have a design certification as described under R645-301-512.

536.100. The disposal facility will be designed using current prudent engineering practices and will meet design criteria established by the Division.

536.110. The disposal facility will be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction.

536.120. Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, will be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions will take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

536.200. Coal mine waste will be placed in a controlled manner to:

536.210. Ensure mass stability and prevent mass movement during and after construction;

536.220. Not create a public hazard; and

536.230. Prevent combustion.

536.300. Coal mine waste may be disposed of in excess spoil fills if approved by the Division and, if such waste is:

536.310. Placed in accordance with applicable portions of R645-301-210, R645-301-513.400, R645-301-514.200, R645-301-528.322, R645-301-536.900, R645-301-553.250, and R645-301-746.200;

536.320. Nontoxic and nonacid forming; and

536.330. Of the proper characteristics to be consistent with the design stability of the fill.

536.400. New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste will meet the requirements of R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100.

536.410. Coal mine waste will not be used for construction of impounding structures unless it has been

demonstrated to the Division that the stability of such a structure conforms to the requirements of R645-301 and R645-302.

536.420. The stability of the structure will be discussed in detail in the design plan submitted to the Division in accordance with R645-301-512.100, R645-301-512.230, R645-301-521.169, R645-301-531, R645-301-533.600, R645-301-533.700, R645-301-536.800, R645-301-542.500, R645-301-732.210, and R645-301-733.100.

536.500. Disposal of Coal Mine Waste in Special Areas.

536.510. Coal mine waste materials from activities located outside a permit area may be disposed of in the permit area only if approved by the Division. Approval will be based upon a showing that such disposal will be in accordance with R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100.

536.520. Underground Disposal. Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the Division and MSHA under R645-301-513.300, R645-301-528.321, R645-301-536.700, and R645-301-746.400.

536.600. Underground Development Waste. Each plan will describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to R645-301-211, R645-301-212,R645-301-412.300, R645-301-512.210, R645-301-512.220,R645-301-514.100, R645-301-528.310, R645-301-535.100,through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

536.700. Coal Processing Waste. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, each plan for returning coal processing waste to abandoned underground workings will describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

536.800. Coal processing waste banks, dams, and embankments will be designed to comply with:

536.810 R645-301-210, R645-301-512.230, R645-301-513.400, R645-301-514.200, R645-301-515.200, R645-301-528.322, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.400, R645-301-536.500, R645-301-536.900, R645-301-542.730, R645-301-553.250, and R645-301-746.100 through R645-301-746.300.

536.820. Coal processing waste dams and embankments will comply with the requirements of MSHA, 30 CFR 77.216-1 and 30 CFR 77.216-2, and will contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation will be planned and supervised by an engineer or engineering geologist, according to the following:

536.821. The number, location, and depth of borings and test pits will be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions;

536.822. The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions, which may affect the particular dam, embankment, or reservoir site will be considered;

536.823. All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment will be identified on each plan; and

536.824. Consideration will be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

536.900. Refuse Piles. Refuse piles will meet the requirements of R645-301-210, R645-301-512.230, R645-301-513.400, R645-301-514.200, R645-301-515.200, R645-301-528.322, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-536.900, R645-301-542.730, R645-301-553.250, R645-301-746.100 through R645-301-746.200, and the requirements of MSHA, 30 CFR 77.214 and 30 CFR 77.215.

537. Regraded Slopes.

537.100. Each application will contain a report of appropriate geotechnical analysis, where approval of the Division is required for alternative specifications or for steep cut slopes under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

537.200. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, regrading of settled and revegetated fills to achieve approximate original contour at the conclusion of mining operations will not be required if the following conditions are met.

537.210. Settled and revegetated fills will be composed of spoil or nonacid- or nontoxic-forming underground development waste.

537.220. The spoil or underground development waste will not be located so as to be detrimental to the environment, to the health and safety of the public, or to the approved postmining land use.

537.230. Stability of the spoil or underground development waste will be demonstrated through standard geotechnical analysis to be consistent with backfilling and grading requirements for material on the solid bench (1.3 static safety factor) or excess spoil requirements for material not placed on a solid bench (1.5 static safety factor).

537.240. The surface of the spoil or underground development waste will be vegetated according to R645-301-356 and R645-301-357, and surface runoff will be controlled in accordance with R645-301-742.300.

537.250. If it is determined by the Division that disturbance of the existing spoil or underground development waste would increase environmental harm or adversely affect the health and safety of the public, the Division may allow the existing spoil or underground development waste pile to remain in place. The Division may require stabilization of such spoil

or underground development waste in accordance with the requirements of R645-301-537.210 through R645-301-537.240.

540. Reclamation Plan.

541. General.

541.100. Persons who cease coal mining and reclamation operations permanently will close or backfill or otherwise permanently reclaim all affected areas, in accordance with the R645 Rules and the permit approved by the Division.

541.200. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, all underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the Division as suitable for the postmining land use or environmental monitoring, will be removed and the affected land reclaimed.

541.300. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, all surface equipment, structures, or other facilities not required for continued underground mining activities and monitoring, unless approved by the Division as suitable for the postmining land use or environmental monitoring will be removed and the affected lands reclaimed.

541.400. Each application will include a plan for the reclamation of the lands within the proposed permit area which shows how the applicant will comply with R645-301, and the environmental protection performance standards of the State Program.

542. Narratives, Maps and Plans. The reclamation plan for the proposed permit area will include:

542.100. A detailed timetable for the completion of each major step in the reclamation plan;

542.200. A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, and R645-302-234;

542.300. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, final surface configuration maps with cross sections (at intervals specified by the Division) that indicate:

542.310. The anticipated final surface configuration to be achieved for the affected areas. The maps and cross sections will be prepared and certified as described under R645-301-512; and

542.320. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of coal mining and reclamation operations;

542.400. Before abandoning a permit area or seeking bond release, a description ensuring all temporary structures are removed and reclaimed, and all permanent sedimentation ponds, impoundments and treatment facilities that meet the requirements of the R645 Rules for permanent structures, have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator will renovate such structures if necessary to meet the requirements of the R645 Rules and to conform to the approved reclamation plan;

542.500. A timetable, and plans to remove each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment, if appropriate;

542.600. Roads. A road not to be retained for use under an approved postmining land use will be reclaimed immediately after it is no longer needed for mining and reclamation operations, including:

542.610. Closing the road to traffic;

542.620. Removing all bridges and culverts; unless approved as part of the postmining land use.

542.630. Scarifying or ripping of the roadbed and replacing topsoil and revegetating disturbed surfaces in accordance with R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, R645-301-243, R645-301-244.200 and R645-301-353 through R645-301-357.

542.640. Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements.

542.700. Final Abandonment of Mine Openings and Disposal Areas.

542.710. A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage other openings within the proposed permit area, in accordance with R645-301-529, R645-301-551, R645-301-631, R645-301-738, and R645-301-765.

542.720. Disposal of Excess Spoil. Excess spoil will be placed in designated disposal areas within the permit area, in a controlled manner to ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use. Excess spoil that is combustible will be adequately covered with noncombustible material to prevent sustained combustion. The reclamation of excess spoil will comply with the design criteria under R645-301-553.240.

542.730. Disposal of Coal Mine Waste. Coal mine waste will be placed in a controlled manner to ensure that the final disposal facility will be suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

542.740. Disposal of Noncoal Mine Wastes.

542.741. Noncoal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities will be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage will ensure that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

542.742. Final disposal of noncoal mine wastes will be in a designated disposal site in the permit area or a state-approved solid waste disposal area. Wastes will be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two feet of suitable cover will be placed over the site, slopes stabilized, and revegetation accomplished in accordance with R645-301-244.200 and R645-301-353 through R645-301-357, inclusive. Operation of the disposal site will be conducted in accordance with all local, Utah, and federal requirements.

542.800. The reclamation plan for the proposed coal

mining and reclamation operations will also include a detailed estimate of reclamation costs as described in R645-301-830.100 - R645-301-830.300.

550. Reclamation Design Criteria and Plans. Each permit application will include site specific plans that incorporate the following design criteria for reclamation activities.

551. Casing and Sealing of Underground Openings. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, each shaft, drift, adit, tunnel, or other opening to the surface from underground will be capped, sealed and backfilled, or otherwise properly managed, as required by the Division and consistent with MSHA, 30 CFR 75.1771. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters.

552. Permanent Features.

552.100. Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

552.200. Permanent impoundments may be approved if they meet the requirements of R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-542.400, R645-301-733.220 through R645-301-733.224, R645-301-743, and if they are suitable for the approved postmining land use.

553. Backfilling and Grading. Backfilling and grading design criteria will be described in the permit application. Nothing in R645-301-553 will prohibit the placement of material in road and portal pad embankments located on the downslope, so long as the material used and the embankment design comply with the applicable requirements of R645-301-500 and R645-301-700 and the material is moved and placed in a controlled manner. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES rough backfilling and grading will follow coal removal by not more than 60 days or 1500 linear feet. The Division may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under R645-301-542.200, that additional time is necessary.

553.100. Disturbed Areas. Disturbed areas will be backfilled and graded to:

553.110. Achieve the approximate original contour (AOC), except as provided in R645-301-553.500 through R645-301-553.540 (previously mined areas (PMA's), continuously mined areas (CMA's) and areas subject to the AOC provisions), R645-301-553.600 through R645-301-553.612 (PMA's and CMA's), R645-302-270 (non-mountaintop removal on steep slopes), R645-302-220 (mountaintop removal mining), R645-301-553.700 (thin overburden) and R645-301-553.800 (thick overburden);

553.120. Eliminate all highwalls, spoil piles, and depressions, except as provided in R645-301-552.100 (small depressions); R645-301-553.500 through R645-301-553.540 (PMA's, CMA's and areas subject to approximate original contour (AOC) provisions; R645-301-553.600 through R645-301-553.612 (PMA's and CMA's); and in R645-301-553.650 (highwall management under the (AOC) provisions);

553.130. Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and prevents slides, except as provided in R645-301-553.530;

553.140. Minimize erosion and water pollution both on and off the site; and

553.150. Support the approved post mining land use.

553.200. Spoil and Waste. Spoil and waste materials will be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

553.210. Spoil, except as provided in R645-301-537.200 (Settled and Revegetated Fills), for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, and except where excess spoil is disposed of in accordance with R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400 will be returned to the mined out surface areas (UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES) or mined area (SURFACE COAL MINING AND RECLAMATION ACTIVITIES).

553.220. Spoil may be placed on the area outside the mined-out surface area (UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES) or in the mined-out area (SURFACE COAL MINING AND RECLAMATION ACTIVITIES) in non-steep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

553.221. All vegetative and organic material will be removed from the area;

553.222. The topsoil on the area will be removed, segregated, stored, and redistributed in accordance with R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243; and

553.223. The spoil will be backfilled and graded on the area in accordance with R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600, and R645-301-553.900.

553.230. Preparation of final graded surfaces will be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

553.240. The final configuration of the fill (excess spoil) will be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches will not be steeper than 2h:1v (50 percent).

553.250. Refuse Piles.

553.251. The final configuration for the refuse pile will be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches will not be steeper than 2h:1v (50 percent).

553.252. Following final grading of the refuse pile, the coal mine waste will be covered with a minimum of four feet of the best available, nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The Division may allow less than four feet of cover material based on physical and chemical analyses which show that the requirements of R645-301-244.200 and R645-301-353 through R645-301-357 are met.

553.260. Disposal of coal processing waste and underground development waste in the mined-out surface area (UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES) or mined-out area (SURFACE COAL MINING AND RECLAMATION ACTIVITIES) will be in accordance with R645-301-210, R645-301-512.230, R645-301-513.400, R645-301-514.200, R645-301-515.200, R645-301-528.322, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-536.900, R645-301-542.730, R645-301-553.250, and R645-301-746.100 through R645-301-746.200, except that a long-term static safety factor of 1.3 will be achieved.

553.300. Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining will be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with R645-301-731.100 through R645-301-731.522 and R645-301-731.800, to prevent sustained combustion, and to minimize adverse effects on plant growth and on the approved postmining land use.

553.400. Cut-and-fill terraces may be allowed by the Division where:

553.410. Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or

553.420. Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

553.500. Previously Mined Areas (PMA's), Continuously Mined Areas (CMA's), and Areas with remaining Highwalls Subject to the Approximate Original Contour (AOC) Provisions.

553.510. Remining operations on PMA's, CMA's, or on areas with remaining highwalls subject to the AOC Provisions will comply with the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, and R645-302-234, except as provided in R645-301-553.500, R645-301-553.600 and R645-301-553.650.

553.520. The backfill of all remaining highwalls will be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

553.530. Any remaining highwall will be stable and not pose a hazard to the public health and safety or to the environment. The operator will demonstrate, to the satisfaction of the Division, that the remaining highwall achieves a minimum long-term static safety factor of 1.3 and prevents slides, or provide an alternative criterion to establish that the remaining highwall is stable and does not pose a hazard to the public health and safety or to the environment; and

553.540. Spoil placed on the outslope during previous mining operations will not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

553.600. Previously Mined Areas (PMA's) and Continuously Mined Areas (CMA's). For PMA's and CMA's the special compliance measures include:

553.610. The requirements of R645-301-553.110 and R645-301-553.120, addressing the elimination of highwalls, will not apply to PMA's or CMA's where the volume of all reasonably available spoil is demonstrated in writing to the Division to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall will be eliminated to the maximum extent technically practical in accordance with the following requirements:

553.611. All spoils generated by the remining operation or CMA and any other reasonably available spoil will be used to backfill the area;

553.612. Reasonably available spoil in the immediate vicinity of the remining operation or CMA will be included within the permit area.

553.650. Highwall Management Under the Approximate Original Contour Provisions. For situations where a permittee seeks approval for a remaining highwall under the AOC provisions, the permittee will establish, and the Division will find in writing that the remaining highwall will achieve the stability requirements of R645-301-553.530, that the remaining highwall will meet the approximate original contour criteria of R645-301-553.510 and R645-301-553.520, and that the proposal meets the following criteria:

553.650.100. The remaining highwall will not be greater in height or length than the cliffs and cliff-like escarpments that were replaced or disturbed by the mining operations;

553.650.200. The remaining highwall will replace a preexisting cliff or similar natural premining feature and will resemble the structure, composition, and function of the natural cliff it replaces;

553.650.300. The remaining highwall will be modified, if necessary, as determined by the Division to restore cliff-type habitats used by the flora and fauna existing prior to mining;

553.650.400. The remaining highwall will be compatible with the post mining land use and the visual attributes of the area; and

553.650.500. The remaining highwall will be compatible with the geomorphic processes of the area.

553.700. Backfilling and Grading: Thin Overburden. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, thin overburden means that sufficient spoil and other waste materials to restore the disturbed area to its approximate original contour are not available from the entire permit area. A condition of insufficient spoil and other waste materials is deemed to exist when the overburden thickness times the swell factor, plus the thickness of other available waste materials is less than the combined thickness of the overburden and the coal prior to removing the coal. Backfilling and grading to reclaim a thin overburden area would result in a surface configuration of the reclaimed area that would

not closely resemble the topography of the land prior to mining or blend into and complement the drainage pattern of the surrounding terrain. The provisions of this section apply only when SURFACE COAL MINING AND RECLAMATION ACTIVITIES cannot be carried out to comply with the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600, and R645-301-553.900 to achieve the approximate original contour. The operator will, at a minimum:

553.710. Use all available spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose; and

553.720. Meet the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-535.100, R645-301-535.112 through R645-301-535.130, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100.

553.800. Backfilling and Grading: Thick Overburden. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, thick overburden means that more than sufficient spoil and other waste materials to restore the disturbed area to its approximate original contour are available from the entire permit area. A condition of more than sufficient spoil and other waste materials is deemed to exist when the overburden thickness times the swell factor, plus the thickness of other available waste materials exceeds the combined thickness of the overburden and the coal prior to removing the coal. Backfilling and grading to reclaim a thick overburden area would result in a surface configuration of the reclaimed area that would not closely resemble the topography of the land prior to mining or blend into and complement the drainage pattern of the surrounding terrain. The provisions of this section apply only when SURFACE COAL MINING AND RECLAMATION ACTIVITIES cannot be carried out to comply with the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600, and R645-301-553.900 to achieve the approximate original contour. In addition the operator will, at a minimum:

553.810. Use the spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose;

553.820. Meet the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-535.100, R645-301-535.112 through R645-301-535.130, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100; and

553.830. Dispose of any excess spoil in accordance with R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

553.900. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, regrading of settled and revegetated fills at the conclusion of coal mining and reclamation operations will not be required if the conditions of R645-301-537.200 are met;

560. Performance Standards. Coal mining and reclamation operations will be conducted in accordance with the approved permit and requirements of R645-301-510 through R645-301-553.

R645-301-600. Geology.

The rules in R645-301-600 present the requirements for information related to geology which is to be included in each permit application.

610. Introduction.

611. General Requirements. Each permit application will include descriptions of:

611.100. The geology within and adjacent to the permit area as given under R645-301-621 through R645-301-627; and

611.200. Proposed operations given under R645-301-630.

612. All cross sections, maps and plans as required by R645-301-622 will be prepared and certified as described under R645-301-512.100

620. Environmental Description.

621. General Requirements. Each permit application will include a description of the geology within the proposed permit and adjacent areas that may be affected or impacted by the proposed coal mining and reclamation operation.

622. Cross Sections, Maps and Plans. The application will include cross sections, maps and plans showing:

622.100. Elevations and locations of test borings and core samplings;

622.200. Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;

622.300. All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area; and

622.400. Location, and depth if available, of gas and oil wells within the proposed permit area.

623. Each application will include geologic information in sufficient detail to assist in:

623.100. Determining all potentially acid- or toxic-forming strata down to and including the stratum immediately below the coal seam to be mined;

623.200. Determining whether reclamation as required by R645-301 and R645-302 can be accomplished; and

623.300. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES preparing the subsidence control plan described under R645-301-525 and R645-521-142.

624. Geologic information will include, at a minimum, the following:

624.100. A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. This description will include the regional and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and it will also show how the regional and structural geology may affect the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground water. It will be based on:

624.110. The cross sections, maps, and plans required by R645-301-622.100 through R645-301-622.400.

624.120. The information obtained under R645-301-624.200, R645-301-624.300 and R645-301-625; and

624.130. Geologic literature and practices.

624.200. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, any portion of a permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, samples will be collected and analyzed from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The analyses will result in the following:

624.210. Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;

624.220. Chemical analyses identifying those strata that may contain acid- or toxic-forming, or alkalinity-producing materials and to determine their content except that the Division may find that the analysis for alkalinity-producing material is unnecessary; and

624.230. Chemical analysis of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Division may find that the analysis of pyritic sulfur content is unnecessary.

624.300. For lands within the permit and adjacent areas of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES where the strata above the coal seam to be mined will not be removed, samples will be collected and analyzed from test borings or drill cores to provide the following data:

624.310. Logs of drill holes showing the lithologic characteristics, including physical properties and thickness of each stratum that may be impacted, and location of ground water where occurring;

624.320. Chemical analyses for acid- or toxic-forming or alkalinity-producing materials and their content in the strata immediately above and below the coal seam to be mined;

624.330. Chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Division may find that the analysis of pyrite sulfur content is unnecessary; and

624.340. For standard room and pillar mining operations, the thickness and engineering properties of clays of soft rock such as clay shale, if any, in the stratum immediately above and below each coal seam to be mined.

625. If determined to be necessary to protect the hydrologic balance, to minimize or prevent subsidence, or to meet the performance standards of R645-301 and R645-302, the Division may require the collection, analysis and description of geologic information in addition to that required by R645-301-624.

626. An applicant may request the Division to waive in whole or in part the requirements of R645-301-624.200 and R645-301-624.300. The waiver may be granted only if the Division finds in writing that the collection and analysis of such data is unnecessary because other information having equal value or effect is available to the Division in a satisfactory form.

627. An application for a permit to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will include, at a minimum, a description of overburden thickness and lithology.

630. Operation Plan.

631. Casing and Sealing of Exploration Holes and Boreholes. Each permit application will include a description of the methods used to backfill, plug, case, cap, seal or otherwise manage exploration holes or boreholes to prevent acid or toxic drainage from entering water resources, minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. Each exploration hole or borehole that is uncovered or exposed by coal mining and reclamation operations within the permit area will be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the Division. Use of an exploration borehole as a monitoring or water well must meet the provisions of R645-301-731. The requirements of R645-301-631 do not apply to boreholes drilled for the purpose of blasting.

631.100. Temporary Casing and Sealing of Drilled Holes. Each exploration borehole, other drill hole or borehole which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings or to be used to monitor ground water conditions will be temporarily sealed before use and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, protected during use by barricades, or fences, or other protective devices approved by the Division. These protective devices will be periodically inspected and maintained in good operating condition by the operator conducting surface coal mining and reclamation activities.

631.200. Permanent Casing and Sealing of Exploration Holes and Boreholes. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under R645-301-731.400, each exploration hole or borehole will be plugged, capped, sealed, backfilled or otherwise properly managed under R645-301-631 and consistent with 30 CFR 75.1711. Permanent closure methods will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery and to keep acid or other toxic drainage from entering water resources.

632. Subsidence Monitoring. Each application for a permit to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will, except where planned subsidence is projected to be used, include as part of the subsidence monitoring plan described under R645-301-525:

632.100. A determination of the commencement and degree of subsidence so other appropriate measures can be taken to prevent or reduce material damage; and

632.200. A map showing the locations of subsidence monitoring points within and adjacent to the permit area.

640. Performance Standards.

641. All exploration holes and boreholes will be permanently cased and sealed according to the requirements of R645-301-631 and R645-301-631.200.

642. All monuments and surface markers used as subsidence monitoring points and identified under R645-301-632.200 will be reclaimed in accordance with R645-301-521.210.

R645-301-700. Hydrology.

710. Introduction.

711. General Requirements. Each permit application will include descriptions of:

711.100. Existing hydrologic resources as given under R645-301-720.

711.200. Proposed operations and potential impacts to the hydrologic balance as given under R645-301-730.

711.300. The methods and calculations utilized to achieve compliance with hydrologic design criteria and plans given under R645-301-740.

711.400. Applicable hydrologic performance standards as given under R645-301-750.

711.500. Reclamation activities as given under R645-301-760.

712. Certification. All cross sections, maps and plans required by R645-301-722 as appropriate, and R645-301-731.700 will be prepared and certified according to R645-301-512.

713. Inspection. Impoundments will be inspected as described under R645-301-514.300.

720. Environmental Description.

721. General Requirements. Each permit application will include a description of the existing, premining hydrologic resources within the proposed permit and adjacent areas that may be affected or impacted by the proposed coal mining and reclamation operation.

722. Cross Sections and Maps. The application will include cross sections and maps showing:

722.100. Location and extent of subsurface water, if encountered, within the proposed permit or adjacent areas. For UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, location and extent will include, but not limited to areal and vertical distribution of aquifers, and portrayal of seasonal differences of head in different aquifers on cross-sections and contour maps;

722.200. Location of surface water bodies such as streams, lakes, ponds and springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;

722.300. Elevations and locations of monitoring stations used to gather baseline data on water quality and quantity in preparation of the application;

722.400. Location and depth, if available, of water wells in the permit area and adjacent area; and

722.500. Sufficient slope measurements or contour maps to adequately represent the existing land surface configuration of proposed disturbed areas for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and the proposed permit area for SURFACE COAL MINING AND RECLAMATION ACTIVITIES will be measured and recorded to take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

723. Sampling and Analysis. All water quality analyses performed to meet the requirements of R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be conducted according to the methodology in the current edition of "Standard Methods for the Examination of Water and Wastewater" or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater" is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 Fifteenth Street, NW, Washington, D. C. 20036.

724. Baseline Information. The application will include the following baseline hydrologic, geologic and climatologic information, and any additional information required by the Division.

724.100. Ground Water Information. The location and ownership for the permit and adjacent areas of existing wells, springs and other ground-water resources, seasonal quality and quantity of ground water, and usage. Water quality descriptions will include, at a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron and total manganese. Ground-water quantity descriptions will include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

724.200. Surface water information. The name, location, ownership and description of all surface-water bodies such as streams, lakes and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions will include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron and total manganese. Baseline acidity and alkalinity information will be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions will include, at a minimum, baseline information on seasonal flow rates.

724.300. Geologic Information. Each application will include geologic information in sufficient detail, as given under R645-301-624, to assist in:

724.310. Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary; and

724.320. Determining whether reclamation as required by the R645 Rules can be accomplished and whether the proposed operation has been designed to prevent material damage to the

hydrologic balance outside the permit area.

724.400. Climatological Information.

724.410. When requested by the Division, the permit application will contain a statement of the climatological factors that are representative of the proposed permit area, including:

724.411. The average seasonal precipitation;

724.412. The average direction and velocity of prevailing winds; and

724.413. Seasonal temperature ranges.

724.420. The Division may request such additional data as deemed necessary to ensure compliance with the requirements of R645-301 and R645-302.

724.500. Supplemental information. If the determination of the PHC required by R645-301-728 indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under R645-301-724.100 and R645-301-724.200 will be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

724.700. Each permit application that proposes to conduct coal mining and reclamation operations within a valley holding a stream or in a location where the permit area or adjacent area includes any stream will meet the requirements of R645-302-320.

725. Baseline Cumulative Impact Area Information.

725.100. Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed coal mining and reclamation operation and all anticipated coal mining and reclamation operations on surface- and ground-water systems as required by R645-301-729 will be provided to the Division if available from appropriate federal or state agencies.

725.200. If this information is not available from such agencies, then the applicant may gather and submit this information to the Division as part of the permit application.

725.300. The permit will not be approved until the necessary hydrologic and geologic information is available to the Division.

726. Modeling. The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the Division for each site even when such techniques are used.

727. Alternative Water Source Information. If the probable hydrologic consequences determination required by R645-301-728 indicates that the proposed SURFACE COAL MINING AND RECLAMATION ACTIVITY may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the application will contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

728. Probable Hydrologic Consequences (PHC) Determination.

728.100. The permit application will contain a determination of the PHC of the proposed coal mining and reclamation operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

728.200. The PHC determination will be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

728.300. The PHC determination will include findings on:

728.310. Whether adverse impacts may occur to the hydrologic balance;

728.320. Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface- or ground-water supplies;

728.330. What impact the proposed coal mining and reclamation operation will have on:

728.331. Sediment yield from the disturbed area;

728.332. Acidity, total suspended and dissolved solids and other important water quality parameters of local impact;

728.333. Flooding or streamflow alteration;

728.334. Ground-water and surface-water availability; and

728.335. Other characteristics as required by the Division; and

728.340. Whether the proposed SURFACE COAL MINING AND RECLAMATION ACTIVITY will proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose; Or

728.350. Whether the UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES conducted after October 24, 1992 may result in contamination, diminution or interruption of State-appropriated Water in existence within the proposed permit or adjacent areas at the time the application is submitted.

728.400. An application for a permit revision will be reviewed by the Division to determine whether a new or updated PHC determination will be required.

729. Cumulative Hydrologic Impact Assessment (CHIA).

729.100. The Division will provide an assessment of the probable cumulative hydrologic impacts of the proposed coal mining and reclamation operation and all anticipated coal mining and reclamation operations upon surface- and ground-water systems in the cumulative impact area. The CHIA will be sufficient to determine, for purposes of permit approval whether the proposed coal mining and reclamation operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Division may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

729.200. An application for a permit revision will be reviewed by the Division to determine whether a new or updated CHIA will be required.

730. Operation Plan.

731. General Requirements. The permit application will

include a plan, with maps and descriptions, indicating how the relevant requirements of R645-301-730, R645-301-740, R645-301-750 and R645-301-760 will be met. The plan will be specific to the local hydrologic conditions. It will contain the steps to be taken during coal mining and reclamation operations through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to support approved postmining land use in accordance with the terms and conditions of the approved permit and performance standards of R645-301-750; to comply with the Clean Water Act (33 U.S.C. 1251 et seq.); and to meet applicable federal and Utah water quality laws and regulations. The plan will include the measures to be taken to: avoid acid or toxic drainage; prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water treatment facilities when needed; and control drainage. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the plan will include measures to be taken to protect or replace water rights and restore approximate premining recharge capacity. The plan will specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under R645-301-728 and will include preventative and remedial measures.

The Division may require additional preventative, remedial or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Coal mining and reclamation operations that minimize water pollution and changes in flow will be used in preference to water treatment.

731.100. Hydrologic-Balance Protection.

731.110. Ground-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R645-301-731 and the following:

731.111. Ground-water quality will be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water; and

731.112. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES ground-water quantity will be protected by handling earth materials and runoff in a manner that will restore approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.

731.120. Surface-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R645-301-731 and the following:

731.121. Surface-water quality will be protected by handling earth materials, ground-water discharges and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and, otherwise prevent water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching or other reclamation and remedial practices are not adequate to meet the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800 and R645-301-751, the operator will use and maintain the necessary water treatment facilities or water quality controls; and

731.122. Surface-water quantity and flow rates will be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under R645-301-731.

731.200. Water Monitoring.

731.210. Ground-Water Monitoring. Ground-water monitoring will be conducted according to the plan approved under R645-301-731.200 and the following:

731.211. The permit application will include a ground-water monitoring plan based upon the PHC determination required under R645-301-728 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan will provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in R645-301-731. It will identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It will describe how these data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, total manganese and water levels will be monitored;

731.212. Ground-water will be monitored and data will be submitted at least every three months for each monitoring location. Monitoring submittals will include analytical results from each sample taken during the approved reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator will promptly notify the Division and immediately take the actions provided for in R645-300-145 and R645-301-731;

731.213. If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the Division;

731.214. Ground-water monitoring will proceed through mining and continue during reclamation until bond release. Consistent with the procedures of R645-303-220 through R645-303-228, the Division may modify the monitoring requirements including the parameters covered and the sampling frequency if the operator demonstrates, using the monitoring data obtained under R645-301-731.214 that:

731.214.1. The coal mining and reclamation operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses and the SURFACE COAL MINING AND RECLAMATION ACTIVITY has protected or replaced the water rights of other users; or

731.214.2. Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under R645-301-731.211.

731.215. Equipment, structures and other devices used in conjunction with monitoring the quality and quantity of ground water on-site and off-site will be properly installed, maintained and operated and will be removed by the operator when no longer needed.

731.220. Surface-Water Monitoring. Surface-water monitoring will be conducted according to the plan approved under R645-301-731.220 and the following:

731.221. The permit application will include a surface-water monitoring plan based upon the PHC determination required under R645-301-728 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan will provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in R645-301-731 as well as the effluent limitations found in R645-301-751;

731.222. The plan will identify the surface water quantity and quality parameters to be monitored, sampling frequency and site locations. It will describe how these data may be used to determine the impacts of the operation upon the hydrologic balance:

731.222.1. At all monitoring locations in streams, lakes and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25 degrees C, total suspended solids, pH, total iron, total manganese and flow will be monitored; and

731.222.2. For point-source discharges, monitoring will be conducted in accordance with 40 CFR Parts 122 and 123, R645-301-751 and as required by the Utah Division of Environmental Health for National Pollutant Discharge Elimination System (NPDES) permits;

731.223. Surface-water monitoring data will be submitted at least every three months for each monitoring location. Monitoring submittals will include analytical results from each sample taken during the approved reporting period. When the analysis of any surface water sample indicates noncompliance with the permit conditions, the operator will promptly notify the Division and immediately take the actions provided for in R645-300-145 and R645-301-731. The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System (NPDES) reporting requirements;

731.224. Surface-water monitoring will proceed through mining and continue during reclamation until bond release. Consistent with R645-303-220 through R645-303-228, the Division may modify the monitoring requirements, except those required by the Utah Division of Environmental Health, including the parameters covered and sampling frequency if the operator demonstrates, using the monitoring data obtained under R645-301-731.224 that:

731.224.1. The operator has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses and the SURFACE COAL MINING AND RECLAMATION ACTIVITY has protected or replaced the water rights of other users; or

731.224.2. Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under R645-301-731.221.

731.225. Equipment, structures and other devices used in conjunction with monitoring the quality and quantity of surface water on-site and off-site will be properly installed, maintained and operated and will be removed by the operator when no longer needed.

731.300. Acid- and Toxic-Forming Materials.

731.310. Drainage from acid- and toxic-forming materials and underground development waste into surface water and ground water will be avoided by:

731.311. Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated; and

731.312. Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff and the infiltration of polluted water. Storage will be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

731.320. Storage, burial or treatment practices will be consistent with other material handling and disposal provisions of R645 Rules.

731.400. Transfer of Wells. Before final release of bond, exploratory or monitoring wells will be sealed in a safe and environmentally sound manner in accordance with R645-301-631, R645-301-738, and R645-301-765. With the prior approval of the Division, wells may be transferred to another party for further use. However, at a minimum, the conditions of such transfer will comply with Utah and local laws and the permittee will remain responsible for the proper management of the well until bond release in accordance with R645-301-529, R645-301-551, R645-301-631, R645-301-738, and R645-301-765.

731.500. Discharges.

731.510. Discharges into an underground mine.

731.511. Discharges into an underground mine are prohibited, unless specifically approved by the Division after a demonstration that the discharge will:

731.511.1. Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from coal mining and reclamation operations;

731.511.2. Not result in a violation of applicable water quality standards or effluent limitations;

731.511.3. Be at a known rate and quality which will meet the effluent limitations of R645-301-751 for pH and total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the Division; and

731.511.4. Meet with the approval of MSHA.

731.512. Discharges will be limited to the following:

731.512.1. Water;

731.512.2. Coal processing waste;

731.512.3. Fly ash from a coal fired facility;

731.512.4. Sludge from an acid-mine-drainage treatment facility;

731.512.5. Flue-gas desulfurization sludge;

731.512.6. Inert materials used for stabilizing underground mines; and

731.512.7. Underground mine development wastes.

731.513. Water from the underground workings of an UNDERGROUND COAL MINING AND RECLAMATION ACTIVITY may be diverted into other underground workings according to the requirements of R645-301-731.100 through R645-301-731.522 and R645-301-731.800.

731.520. Gravity Discharges from UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

731.521. Surface entries and accesses to underground workings will be located and managed to prevent or control gravity discharge of water from the mine. Gravity discharges of water from an underground mine, other than a drift mine subject to R645-301-731.522, may be allowed by the Division if it is demonstrated that the untreated or treated discharge complies with the performance standards of R645-301 and R645-302 and any additional NPDES permit requirements.

731.522. Notwithstanding anything to the contrary in R645-301-731.521, the surface entries and accesses of drift mines first used after January 21, 1981 and located in acid-producing or iron-producing coal seams will be located in such a manner as to prevent any gravity discharge from the mine.

731.530. State-appropriated water supply. The permittee will promptly replace any State-appropriated water supply that is contaminated, diminished or interrupted by UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES conducted after October 24, 1992, if the affected water supply was in existence before the date the Division received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic and geologic information required in R645-301-700. will be used to determine the impact of mining activities upon the water supply.

731.600. Stream Buffer Zones.

731.610. No land within 100 feet of a perennial stream or an intermittent stream will be disturbed by coal mining and reclamation operations, unless the Division specifically authorizes coal mining and reclamation operations closer to, or through, such a stream. The Division may authorize such activities only upon finding that:

731.611. Coal mining and reclamation operations will not cause or contribute to the violation of applicable Utah or federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

731.612. If there will be a temporary or permanent stream channel diversion, it will comply with R645-301-742.300.

731.620. The area not to be disturbed will be designated as a buffer zone, and the operator will mark it as specified in R645-301-521.260.

731.700. Cross Sections and Maps. Each application will contain for the proposed permit area:

731.710. A map showing the locations of water supply intakes for current users of surface water flowing into, out of and within a hydrologic area defined by the Division, and those surface waters which will receive discharges from affected areas in the proposed permit area;

731.720. A map showing the locations of each water diversion, collection, conveyance, treatment, storage and discharge facility to be used. The map will be prepared and certified according to R645-301-512;

731.730. A map showing locations and elevations of each station to be used for water monitoring during coal mining and reclamation operations. The map will be prepared and certified according to R645-301-512;

731.740. A map showing the locations of each existing and proposed sedimentation pond, impoundment and coal processing waste bank, dam or embankment. The map will be prepared and certified according to R645-301-512;

731.750. Cross sections for each existing and proposed sedimentation pond, impoundment and coal processing waste bank, dam or embankment. The cross sections will be prepared and certified according to R645-301-512.200; and

731.760. Other relevant cross sections and maps required by the Division depending on the structures and facilities located in the permit area.

731.800. Water Rights and Replacement. Any person who conducts SURFACE COAL MINING AND RECLAMATION ACTIVITIES will replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline hydrologic information required in R645-301-624.100 through R645-301-624.200, R645-301-625, R645-301-626, R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be used to determine the extent of the impact of mining upon ground water and surface water.

732. Sediment Control Measures.

732.100. Siltation Structures. Siltation structures will be constructed and maintained to comply with R645-301-742.214. Any siltation structure that impounds water will be constructed and maintained to comply with R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743.

732.200. Sedimentation Ponds.

732.210. Sedimentation ponds whether temporary or permanent, will be designed in compliance with the requirements of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment will also be constructed and maintained to comply with the requirements of R645-301-743, R645-301-533.100 through R645-301-533.600, R645-301-512.240, R645-301-514.310 through R645-301-514.321 and R645-301-515.200.

732.220. Each plan will, at a minimum, comply with the MSHA requirements given under R645-301-513.100 and R645-

301-513.200.

732.300. Diversions. All diversions will be constructed and maintained to comply with the requirements of R645-301-742.100 and R645-301-742.300.

732.400. Road Drainage. All roads will be constructed, maintained and reconstructed to comply with R645-301-742.400.

732.410. The permit application will contain a description of measures to be taken to obtain Division approval for alteration or relocation of a natural drainageway under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

732.420. The permit application will contain a description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for Division approval under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

733. Impoundments.

733.100. General Plans. Each permit application will contain a general plan and detailed design plans for each proposed water impoundment within the proposed permit area. Each general plan will:

733.110. Be prepared and certified as described under R645-301-512;

733.120. Contain maps and cross sections;

733.130. Contain a narrative that describes the structure;

733.140. Contain the results of a survey as described under R645-301-531;

733.150. Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure; and

733.160. Contain a certification statement which includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the Division. The Division will have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

733.200. Permanent and Temporary Impoundments.

733.210. Permanent and temporary impoundments will be designed to comply with the requirements of R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.226, R645-301-743.240, and R645-301-743. Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration will comply with the requirements of 30 CFR 77.216-1 and 30 CFR 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will be submitted to the Division as part of the permit application package. For impoundments not included in R645-301-533.610 the Division may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in R645-301-533.110.

733.220. A permanent impoundment of water may be created, if authorized by the Division in the approved permit based upon the following demonstration:

733.221. The size and configuration of such impoundment will be adequate for its intended purposes;

733.222. The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable Utah and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable Utah and federal water quality standards;

733.223. The water level will be sufficiently stable and be capable of supporting the intended use;

733.224. Final grading will provide for adequate safety and access for proposed water users;

733.225. The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses; and

733.226. The impoundment will be suitable for the approved postmining land use.

733.230. The Division may authorize the construction of temporary impoundments as part of coal mining and reclamation operations.

733.240. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment will promptly inform the Division according to R645-301-515.200.

734. Discharge Structures. Discharge structures will be constructed and maintained to comply with R645-301-744.

735. Disposal of Excess Spoil. Areas designated for the disposal of excess spoil and excess spoil structures will be constructed and maintained to comply with R645-301-745.

736. Coal Mine Waste. Areas designated for the disposal of coal mine waste and coal mine waste structures will be constructed and maintained to comply with R645-301-746.

737. Noncoal Mine Waste. Noncoal mine waste will be stored and final disposal of noncoal mine waste will comply with R645-301-747.

738. Temporary Casing and Sealing of Wells. Each well which has been identified in the approved permit application to be used to monitor ground water conditions will comply with R645-301-748 and be temporarily sealed before use and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES protected during use by barricades, or fences, or other protective devices approved by the Division. These devices will be periodically inspected and maintained in good operating condition by the operator conducting SURFACE COAL MINING AND RECLAMATION ACTIVITIES.

740. Design Criteria and Plans.

741. General Requirements. Each permit application will include site-specific plans that incorporate minimum design criteria as set forth in R645-301-740 for the control of drainage from disturbed and undisturbed areas.

742. Sediment Control Measures.

742.100. General Requirements.

742.110. Appropriate sediment control measures will be designed, constructed and maintained using the best technology currently available to:

742.111. Prevent, to the extent possible, additional contributions of sediment to stream flow or to runoff outside the permit area;

742.112. Meet the effluent limitations under R645-301-751; and

742.113. Minimize erosion to the extent possible.

742.120. Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas will reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include, but are not limited to:

742.121. Retaining sediment within disturbed areas;

742.122. Diverting runoff away from disturbed areas;

742.123. Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

742.124. Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds and other measures that reduce overland flow velocities, reduce runoff volumes or trap sediment;

742.125. Treating with chemicals; and

742.126. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, treating mine drainage in underground sumps.

742.200. Siltation Structures. Siltation structures shall be designed in compliance with the requirements of R645-301-742.

742.210. General Requirements.

742.211. Additional contributions of suspended solids and sediment to streamflow or runoff outside the permit area will be prevented to the extent possible using the best technology currently available.

742.212. Siltation structures for an area will be constructed before beginning any coal mining and reclamation operations in that area and, upon construction, will be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

742.213. Any siltation structures which impounds water will be designed, constructed and maintained in accordance with R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743.

742.214. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, any point-source discharge of water from underground workings to surface waters which does not meet the effluent limitations of R645-301-751 will be passed through a siltation structure before leaving the permit area.

742.220. Sedimentation Ponds.

742.221. Sedimentation ponds, when used, will:

742.221.1. Be used individually or in series;

742.221.2. Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Division; and

742.221.3. Be designed, constructed, and maintained to:

742.221.31. Provide adequate sediment storage volume;

742.221.32. Provide adequate detention time to allow the effluent from the ponds to meet Utah and federal effluent limitations;

742.221.33. Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the Division based on terrain, climate, or other site-specific conditions and on a demonstration by the operator that the effluent limitations of R645-301-751 will be met;

742.221.34. Provide a nonclogging dewatering device adequate to maintain the detention time required under R645-301-742.221.32.

742.221.35. Minimize, to the extent possible, short circuiting;

742.221.36. Provide periodic sediment removal sufficient to maintain adequate volume for the design event;

742.221.37. Ensure against excessive settlement;

742.221.38. Be free of sod, large roots, frozen soil, and acid- or toxic forming coal-processing waste; and

742.221.39. Be compacted properly.

742.222. Sedimentation ponds meeting the size or other qualifying criteria of the MSHA, 30 CFR 77.216(a) will comply with all the requirements of that section, and will have a single spillway or principal and emergency spillways that in combination will safely pass a 100-year, 6-hour precipitation event or greater event as demonstrated to be necessary by the Division.

742.223. Sedimentation ponds not meeting the size or other qualifying criteria of the MSHA, 30 CFR 77.216(a) will provide a combination of principal and emergency spillways that will safely discharge a 25-year, 6-hour precipitation event or greater event as demonstrated to be needed by the Division. Such ponds may use a single open channel spillway if the spillway is:

742.223.1. Of nonerodible construction and designed to carry sustained flows; or

742.223.2. Earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

742.224. In lieu of meeting the requirements of R645-301-742.223.1 and 742.223.2 the Division may approve a temporary impoundment as a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer in accordance with R645-301-512.200 that the sedimentation pond will safely control the design precipitation event. The water will be removed from the pond in accordance with current, prudent, engineering practices and any sediment pond so used will not be located where failure would be expected to cause loss of life or serious property damage.

742.225. An exception to the sediment pond location guidance in R645-301-742.224 may be allowed where:

742.225.1. Impoundments meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR Sec. 77.216(a) shall be designed to control the

precipitation of the probable maximum precipitation of a 6-hour event, or greater event specified by the Division.

742.225.2. Impoundments not included in R645-301-742.225.1 shall be designed to control the precipitation of the 100-year 6-hour event, or greater event if specified by the Division.

742.230. Other Treatment Facilities.

742.231. Other treatment facilities will be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the Division based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of R645-301-751 will be met.

742.232. Other treatment facilities will be designed in accordance with the applicable requirements of R645-301-742.220.

742.240. Exemptions. Exemptions to the requirements of R645-301-742.200 and R645-301-763 may be granted if the disturbed drainage area within the total disturbed area is small and the operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed areas to meet the effluent limitations under R645-301-751 or the applicable Utah and federal water quality standards for the receiving waters.

742.300. Diversions.

742.310. General Requirements.

742.311. With the approval of the Division, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions will be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions will not be used to divert water into underground mines without approval of the Division in accordance with R645-301-731.510.

742.312. The diversion and its appurtenant structures will be designed, located, constructed, maintained and used to:

742.312.1. Be stable;

742.312.2. Provide protection against flooding and resultant damage to life and property;

742.312.3. Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

742.312.4. Comply with all applicable local, Utah, and federal laws and regulations.

742.313. Temporary diversions will be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process will be restored in accordance with R645-301 and R645-302. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion will be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement will not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion will be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

742.314. The Division may specify additional design criteria for diversions to meet the requirements of R645-301-742.300.

742.320. Diversion of Perennial and Intermittent Streams.

742.321. Diversion of perennial and intermittent streams within the permit area may be approved by the Division after making the finding relating to stream buffer zones under R645-301-731.600.

742.322. The design capacity of channels for temporary and permanent stream channel diversions will be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

742.323. The requirements of R645-301-742.312.2 will be met when the temporary and permanent diversion for perennial and intermittent streams are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

742.324. The design and construction of all stream channel diversions of perennial and intermittent streams will be certified by a qualified registered professional engineer as meeting the performance standards of R645-301 and R645-302 and any design criteria set by the Division.

742.330. Diversion of Miscellaneous Flows.

742.331. Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the Division. Miscellaneous flows will include ground-water discharges and ephemeral streams.

742.332. The design, location, construction, maintenance, and removal of diversions of miscellaneous flows will meet all of the performance standards set forth in R645-301-742.310.

742.333. The requirements of R645-301-742.312.2 will be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

742.400. Road Drainage.

742.410. All Roads.

742.411. To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads will incorporate appropriate limits for surface drainage control, culvert placement, culvert size, and any necessary design criteria established by the Division.

742.412. No part of any road will be located in the channel of an intermittent or perennial stream unless specifically approved by the Division in accordance with applicable parts of R645-301-731 through R645-301-742.300.

742.413. Roads will be located to minimize downstream

sedimentation and flooding.

742.420. Primary Roads.

742.421. To minimize erosion, a primary road is to be located, insofar as practical, on the most stable available surfaces.

742.422. Stream fords by primary roads are prohibited unless they are specifically approved by the Division as temporary routes during periods of construction.

742.423. Drainage Control.

742.423.1. Each primary road will be designed, constructed or reconstructed and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system will be designed to pass the peak runoff safely from a 10-year, 6-hour precipitation event, or an alternative event of greater size as demonstrated to be needed by the Division.

742.423.2. Drainage pipes and culverts will be constructed to avoid plugging or collapse and erosion at inlets and outlets.

742.423.3. Drainage ditches will be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins will be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.

742.423.4. Natural stream channels will not be altered or relocated without the prior approval of the Division in accordance with R645-301-731.100 through R645-301-731.522, R645-301-731.600, R645-301-731.800, R645-301-742.300, and R645-301-751.

742.423.5. Except as provided in R645-301-742.422, drainage structures will be used for stream channel crossings, made using bridges, culverts or other structures designed, constructed and maintained using current, prudent engineering practice.

743. Impoundments.

743.100. General Requirements. The requirements of R645-301-743 apply to both temporary and permanent impoundments. Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," shall comply with the, "Minimum Emergency Spillway Hydrologic Criteria," table in TR-60 and the requirements of this section. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87-157509-AS. Copies may be inspected at the Division of Oil Gas and Mining Offices, 1594 West North Temple, Salt Lake City, Utah 84114 or at the Division of Administrative Rules, Archives Building, Capitol Hill Complex, Salt Lake City, Utah 84114-1021.

743.110. Impoundments meeting the criteria of the MSHA, 30 CFR 77.216(a) will comply with the requirements of 77.216 and R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will also be submitted to the Division as part of the permit application.

743.120. The design of impoundments will be prepared and certified as described under R645-301-512. Impoundments will have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the NRCS Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

743.130. Impoundments will include either a combination of principal and emergency spillways or a single spillway as specified in 743.131 which will be designed and constructed to safely pass the design precipitation event or greater event specified in R645-301-743.200 or R645-301-743.300.

743.131. The Division may approve a single-open channel spillway that is:

743.131.1. Of nonerodible construction and designed to carry sustained flows; or

743.131.2. Earth-or grass lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

743.131.3 Except as specified in R645-301-742.224 the required design precipitation event for an impoundment meeting the spillway requirements of R645-301-743.130 is:

743.131.4 For an impoundment meeting the NRCS Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the Division.

743.131.5 For an impoundment meeting or exceeding the size or other criteria of 30 CFR Sec. 77.216(a), a 100-year 6-hour event, or greater event as specified by the Division.

743.131.6 For an impoundment not included in R645-301-743.131.4 or 743.131.5, a 25-year 6-hour event, or greater event as specified by the Division.

743.132 In lieu of meeting the requirements of 743.131 the Division may approve an impoundment which meets the requirements of the sediment pond criteria of R645-301-742.224 and 742.225.

743.140. Impoundments will be inspected as described under R645-301-514.300.

743.200. The design precipitation event for the spillways for a permanent impoundment meeting the size or other criteria of MSHA rule 30 CFR 77.216(a) is a 100-year, 6-hour precipitation event, or such larger event as demonstrated to be needed by the Division.

743.300. The design precipitation event for the spillways for an impoundment not meeting the size or other criteria of MSHA rule 30 CFR 77.216(a) is a 25-year, 6-hour precipitation event, or such larger event as demonstrated to be needed by the Division.

744. Discharge Structures.

744.100. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions will be controlled, by energy dissipators, riprap channels and other devices, where necessary to reduce erosion to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance.

744.200. Discharge structures will be designed according to standard engineering design procedures.

745. Disposal of Excess Spoil.

745.100. General Requirements.

745.110. Excess spoil will be placed in designated disposal areas within the permit area, in a controlled manner to:

745.111. Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;

745.112. Ensure permanent impoundments are not located on the completed fill. Small depressions may be allowed by the Division if they are needed to retain moisture or minimize erosion, create and enhance wildlife habitat or assist revegetation, and if they are not incompatible with the stability of the fill; and

745.113. Adequately cover or treat excess spoil that is acid- and toxic-forming with nonacid nontoxic material to control the impact on surface and ground water in accordance with R645-301-731.300 and to minimize adverse effects on plant growth and the approved postmining land use.

745.120. Drainage control. If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design will include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill and ensure stability.

745.121. Diversions will comply with the requirements of R645-301-742.300.

745.122. Underdrains will consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the Division. The underdrain system will be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and will be protected from piping and contamination by an adequate filter. Rock underdrains will be constructed of durable, nonacid-, nontoxic-forming rock (e.g., natural sand and gravel, sandstone, limestone or other durable rock) that does not slake in water or degrade to soil materials and which is free of coal, clay or other nondurable material. Perforated pipe underdrains will be corrosion resistant and will have characteristics consistent with the long-term life of the fill.

745.200. Valley Fills and Head-of-Hollow Fills.

745.210. Valley fills and head-of-hollow fills will meet the applicable requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100 and the requirements of R645-301-745.200 and R645-301-535.200.

745.220. Drainage Control.

745.221. The top surface of the completed fill will be graded such that the final slope after settlement will be toward properly designed drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill.

745.222. Runoff from areas above the fill and runoff from the surface of the fill will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

745.300. Durable Rock Fills. The Division may approve disposal of excess durable rock spoil provided the following conditions are satisfied:

745.310. Except as provided in R645-301-745.300, the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100 are met;

745.320. The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met; and

745.330. Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

745.400. Preexisting Benches. The Division may approve the disposal of excess spoil through placement on preexisting benches, provided that the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-535.100, R645-301-535.112 through R645-301-535.130, R645-301-535.300 through R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400 and the requirements of R645-301-535.400 are met.

746. Coal Mine Waste.

746.100. General Requirements.

746.110. All coal mine waste will be placed in new or existing disposal areas within a permit area which are approved by the Division.

746.120. Coal mine waste will be placed in a controlled manner to minimize adverse effects of leachate and surface water runoff on surface and ground water quality and quantity.

746.200. Refuse Piles.

746.210. Refuse piles will meet the requirements of R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100 and the additional requirements of R645-301-210, R645-301-513.400, R645-301-514.200, R645-301-528.322, R645-301-536.900, R645-301-553.250, and R645-301-746.200 and the requirements of the MSHA, 30 CFR 77.214 and 77.215.

746.211. If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the design will include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

746.212. Uncontrolled surface drainage may not be diverted over the outslope of the refuse pile. Runoff from areas above the refuse pile and runoff from the surface of the refuse pile will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

746.213. Underdrains will comply with the requirements of R645-301-745.122.

746.220. Surface Area Stabilization.

746.221. Slope protection will be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, will be revegetated upon completion of construction.

746.222. No permanent impoundments will be allowed on the completed refuse pile. Small depressions may be allowed by the Division if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

746.300. Impounding structures. New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste will meet the requirements of R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100.

746.310. Coal mine waste will not be used for construction of impounding structures unless it has been demonstrated to the Division that the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The potential impact of acid mine seepage through the impounding structure will be discussed in detail.

746.311. Each impounding structure constructed of coal mine waste or intended to impound coal mine waste will be designed, constructed and maintained in accordance with R645-301-512.240, R645-301-513.200, R645-301-514.310 through R645-301-514.330, R645-301-515.200, R645-301-533.100 through R645-301-533.500, R645-301-733.230, R645-301-733.240, R645-301-743.100, and R645-301-743.300. Such structures may not be retained permanently as part of the approved postmining land use.

746.312 Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) will have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event, or greater event as demonstrated to be needed by the Division.

746.320. Spillways and outlet works will be designed to provide adequate protection against erosion and corrosion. Inlets will be protected against blockage.

746.330. Drainage control. Runoff from areas above the disposal facility or runoff from the surface of the facility that may cause instability or erosion of the impounding structure will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 and designed to safely pass the runoff from a 100-year, 6-hour design precipitation event.

746.340. Impounding structures constructed of or impounding coal mine waste will be designed and operated so that at least 90 percent of the water stored during the design precipitation event will be removed within a 10-day period following that event.

746.400. Return of Coal Processing Waste to Abandoned Underground Workings. Each permit application to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will, if appropriate, include a plan of proposed methods for returning coal processing waste to abandoned underground workings as follows:

746.410. The plan will describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams and the effect on the hydrologic regime;

746.420. The plan will describe each permanent monitoring well to be located in the backfilled areas, the stratum underlying the mined coal and gradient from the backfilled area; and

746.430. The requirements of R645-301-513.300, R645-301-528.321, R645-301-536.700, R645-301-746.410 and R645-746.420 will also apply to pneumatic backfilling operations, except where the operations are exempted by the Division from requirements specifying hydrologic monitoring.

747. Disposal of Noncoal Mine Waste.

747.100. Noncoal mine waste, including but not limited to grease, lubricants, paints, flammable liquids, garbage, machinery, lumber and other combustible materials generated during coal mining and reclamation operations will be placed and stored in a controlled manner in a designated portion of the permit area or state-approved solid waste disposal area.

747.200. Placement and storage of noncoal mine waste within the permit area will ensure that leachate and surface runoff do not degrade surface or ground water.

747.300. Final disposal of noncoal mine waste within the permit area will ensure that leachate and drainage does not degrade surface or underground water.

748. Casing and Sealing of Wells. Each water well will be cased, sealed, or otherwise managed, as approved by the Division, to prevent acid or other toxic drainage from entering ground or surface water, to minimize disturbance to the hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. If a water well is exposed by coal mining and reclamation operations, it will be permanently closed unless otherwise managed in a manner approved by the Division. Use of a drilled hole or borehole or monitoring well as a water well must comply with the provision of R645-301-731.100 through R645-301-731.522 and R645-301-731.800.

750. Performance Standards.

All coal mining and reclamation operations will be conducted to minimize disturbance to the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area and support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of R645-301 and R645-302. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, operations will be conducted to assure the protection or replacement of water rights in accordance with the terms and conditions of the approved permit and the performance standards of R645-301 and R645-302.

751. Water Quality Standards and Effluent Limitations. Discharges of water from areas disturbed by coal mining and reclamation operations will be made in compliance with all Utah and federal water quality laws and regulations and with effluent limitations for coal mining promulgated by the U.S.

Environmental Protection Agency set forth in 40 CFR Part 434.

752. Sediment Control Measures. Sediment control measures must be located, maintained, constructed and reclaimed according to plans and designs given under R645-301-732, R645-301-742 and R645-301-760.

752.100. Siltation structures and diversions will be located, maintained, constructed and reclaimed according to plans and designs given under R645-301-732, R645-301-742 and R645-301-763.

752.200. Road Drainage. Roads will be located, designed, constructed, reconstructed, used, maintained and reclaimed according to R645-301-732.400, R645-301-742.400 and R645-301-762 and to achieve the following:

752.210. Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

752.220. Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

752.230. Neither cause nor contribute to, directly or indirectly, the violation of effluent standards given under R645-301-751;

752.240. Minimize the diminution to or degradation of the quality or quantity of surface- and ground-water systems; and

752.250. Refrain from significantly altering the normal flow of water in streambeds or drainage channels.

753. Impoundments and Discharge Structures. Impoundments and discharge structures will be located, maintained, constructed and reclaimed to comply with R645-301-733, R645-301-734, R645-301-743, R645-301-745 and R645-301-760.

754. Disposal of Excess Spoil, Coal Mine Waste and Noncoal Mine Waste. Disposal areas for excess spoil, coal mine waste and noncoal mine waste will be located, maintained, constructed and reclaimed to comply with R645-301-735, R645-301-736, R645-301-745, R645-301-746, R645-301-747 and R645-301-760.

755. Casing and Sealing of Wells. All wells will be managed to comply with R645-301-748 and R645-301-765. Water monitoring wells will be managed on a temporary basis according to R645-301-738.

760. Reclamation.

761. General Requirements. Before abandoning a permit area or seeking bond release, the operator will ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments and treatment facilities meet the requirements of R645-301 and R645-302 for permanent structures, have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator will renovate such structures if necessary to meet the requirements of R645-301 and R645-302 and to conform to the approved reclamation plan.

762. Roads. A road not to be retained for use under an approved postmining land use will be reclaimed immediately after it is no longer needed for coal mining and reclamation operations, including:

762.100. Restoring the natural drainage patterns;

762.200. Reshaping all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain.

763. Siltation Structures.

763.100. Siltation structures will be maintained until removal is authorized by the Division and the disturbed area has been stabilized and revegetated. In no case will the structure be removed sooner than two years after the last augmented seeding.

763.200. When the siltation structure is removed, the land on which the siltation structure was located will be regraded and revegetated in accordance with the reclamation plan and R645-301-358, R645-301-356, and R645-301-357. Sedimentation ponds approved by the Division for retention as permanent impoundments may be exempted from this requirement.

764. Structure Removal. The application will include the timetable and plans to remove each structure, if appropriate.

765. Permanent Casing and Sealing of Wells. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under R645-301-731.100 through R645-301-731.522 and R645-301-731.800, each well will be capped, sealed, backfilled, or otherwise properly managed, as required by the Division in accordance with R645-301-529.400, R645-301-631.100, and R645-301-748. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters.

R645-301-800. Bonding and Insurance.

The rules in R645-301-800 set forth the minimum requirements for filing and maintaining bonds and insurance for coal mining and reclamation operations under the State Program.

810. Bonding Definitions and Division Responsibilities.

811. Terms used in R645-301-800 may be found defined in R645-100-200.

812. Division Responsibilities -- Bonding.

812.100. The Division will prescribe and furnish forms for filing performance bonds.

812.200. The Division will prescribe by regulation terms and conditions for performance bonds and insurance.

812.300. The Division will determine the amount of the bond for each area to be bonded, in accordance with R645-301-830. The Division will also adjust the amount as acreage in the permit area is revised, or when other relevant conditions change according to the requirements of R645-301-830.400.

812.400. The Division may accept a self-bond if the permittee meets the requirements of R645-301-860.300 and any additional requirements in the State or Federal program.

812.500. The Division will release liability under a bond or bonds in accordance with R645-301-880 through R645-301-880.800.

812.600. If the conditions specified in R645-301-880.900 occur, the Division will take appropriate action to cause all or part of a bond to be forfeited in accordance with procedures of that Section.

812.700. The Division will require in the permit that adequate bond coverage be in effect at all times. Except as

provided in R645-301-840.520, operating without a bond is a violation of a condition upon which the permit is issued.

820. Requirement to File a Bond.

820.100. After a permit application under R645-301 has been approved, but before a permit is issued, the applicant will file with the Division, on a form prescribed and furnished by the Division, a bond or bonds for performance made payable to the Division and conditioned upon the faithful performance of all the requirements of the State Program, the permit and the reclamation plan.

820.110. Areas to be covered by the Performance Bond are:

820.111. The bond or bonds will cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct coal mining and reclamation operations during the initial term of the permit.

820.112. As coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee will file with the Division an additional bond or bonds to cover such increments in accordance with R645-830.400.

820.113. The operator will identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application, and will specify the bond amount to be provided for each area or increment.

820.114. Independent increments will be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the Division become necessary pursuant to R645-301-880.900.

820.120. An operator will not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels, or operations prior to acceptance by the Division of the required performance bond.

820.130. The applicant will file, with the approval of the Division, a bond or bonds under one of the following schemes to cover the bond amounts for the permit area as determined in accordance with R645-301-830:

820.131. A performance bond or bonds for the entire permit area;

820.132. A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or

820.133. An incremental-bond schedule and the performance bond required for the first increment in the schedule.

820.200. Form of the Performance Bond.

820.210. The Division will prescribe the form of the performance bond.

820.220. The Division may allow for:

820.221. A surety bond;

820.222. A collateral bond;

820.223. A self-bond; or

820.224. A combination of any of these bonding methods.

820.300. Period of Liability.

820.310. Performance bond liability will be for the duration of the coal mining and reclamation operations and for a period which is coincident with the operator's period of extended responsibility for successful revegetation provided in R645-301-356 or until achievement of the reclamation requirements of the State Program and permit, whichever is later.

820.320. With the approval of the Division, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under R645-301-830 and 830.400. The scope of work to be guaranteed and the liability assumed under each phase bond will be specified in detail.

820.330. Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the Division. Such areas will be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the Division.

820.340. If the Division approves a long-term, intensive agricultural postmining land-use, in accordance with R645-301-413, the applicable five- or ten-year period of liability will commence at the date of initial planting for such long-term agricultural use.

820.350. General.

820.351. The bond liability of the permittee will include only those actions which he or she is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under R645-301-413.

820.352. Implementation of an alternative postmining land-use approved under R645-301-413.300 which is beyond the control of the permittee need not be covered by the bond. Bond liability for prime farmland will be as specified in R645-301-880.320.

830. Determination of Bond Amount.

830.100. The amount of the bond required for each bonded area will:

830.110. Be determined by the Division;

830.120. Depend upon the requirements of the approved permit and reclamation plan;

830.130. Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology and revegetation potential; and

830.140. Be based on, but not limited to, the detailed estimated cost, with supporting calculations for the estimates, submitted by the permit applicant.

830.200. The amount of the bond will be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Division in the event of forfeiture, and in no case will the total bond initially posted for the entire area under one permit be less than $10,000.

830.300. An additional inflation factor will be added to the subtotal for the permit term. This inflation factor will be based upon an acceptable Costs Index.

830.400. Adjustment of Amount.

830.410. The amount of the bond or deposit required and the terms of the acceptance of the applicant's bond will be adjusted by the Division from time to time as the area requiring bond coverage is increased or decreased or where the cost of

future reclamation changes. The Division may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.

830.420. The Division will:

830.421. Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under R645-301-860.260 of any proposed adjustment to the bond amount; and

830.422. Provide the permittee an opportunity for an informal conference on the adjustment.

830.430. A permittee may request reduction of the amount of the performance bond upon submission of evidence to the Division providing that the permittee's method of operation or other circumstances reduces the estimated cost for the Division to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of R645-301-880.100 through R645-301-880.800.

830.440. In the event that an approved permit is revised in accordance with the R645 rules, the Division will review the bond for adequacy and, if necessary, will require adjustment of the bond to conform to the permit as revised.

830.500. An operator's financial responsibility under R645-301-525.230 for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under R645-301-890.

840. General Terms and Conditions of the Bond.

840.100. The performance bond will be in an amount determined by the Division as provided in R645-301-830.

840.200. The performance bond will be payable to the Division.

840.300. The performance bond will be conditioned upon faithful performance of all the requirements of the State Program and the approved permit, including completion of the reclamation plan.

840.400. The duration of the bond will be for the time period provided in R645-301-820.300.

840.500. General.

840.510. The bond will provide a mechanism for a bank or surety company to give prompt notice to the Division and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

840.520. Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee will be deemed to be without bond coverage and will promptly notify the Division. The Division, upon notification received through procedures of R645-301-840.510 or from the permittee, will, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator will cease coal extraction and will comply with the provisions of R645-301-541.100 through R645-301-541.400 as applicable and will immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations will not resume until the Division has determined that an acceptable bond has been posted.

850. Bonding Requirements for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and Associated Long-Term Coal-Related Surface Facilities and Structures.

850.100. Responsibilities. The Division will require bond coverage, in an amount determined under R645-301-830, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, for which a permit is required. Specific reclamation techniques required for underground mines and long-term facilities will be considered in determining the amount of bond to complete the reclamation.

850.200. Long-term period of liability.

850.210. The period of liability for every bond covering long-term surface disturbances will commence with the issuance of a permit, except that to the extent that such disturbances will occur on a succeeding increment to be bonded, such liability will commence upon the posting of the bond for that increment before the initial surface disturbance of that increment. The liability period will extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provisions of R645-301-880.100 through R645-301-880.800 or until the bond has been replaced or extended in accordance with R645-301-850.230.

850.220. Long-term surface disturbances will include long-term coal-related surface facilities and structures, and surface impacts incident to underground coal mining activities which disturb an area for a period that exceeds five years. Long-term surface disturbances include, but are not limited to: surface features of shafts and slope facilities; coal refuse areas; powerlines; boreholes; ventilation shafts; preparation plants; machine shops, roads and loading and treatment facilities.

850.230. To achieve continuous bond coverage for long-term surface disturbances, the bond will be conditioned upon extension, replacement or payment in full, 30 days prior to the expiration of the bond term.

850.240. Continuous bond coverage will apply throughout the period of extended responsibility for successful revegetation and until the provisions of R645-301-880.100 through R645-301-880.800 inclusive have been met.

850.300. Bond Forfeiture. The Division will take action to forfeit a bond pursuant to R645-301-850 if 30 days prior to bond expiration the operator has not filed:

850.310. The performance bond for a new term as required for continuous coverage; or

850.320. A performance bond providing coverage for the period of liability, including the period of extended responsibility for successful revegetation.

860. Forms of Bonds.

860.100. Surety Bonds.

860.110. A surety bond will be executed by the operator and a corporate surety licensed to do business in Utah that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570.

860.111. Operators who do not have a surety bond with a company that meets the standards of subsection 860.110. will have 120 days from the date of Division notification after enactment of the changes to subsection 860.110. in which to achieve compliance, or face enforcement action.

860.112. When the Division in the course of examining surety bonds notifies an operator that a surety company guaranteeing its performance does not meet the standard of subsection 860.110., the operator has 120 days after notice by mail from the Division to correct the deficiency, or face enforcement action.

860.120. Surety bonds will be noncancellable during their terms, except that surety bond coverage for lands not disturbed may be canceled with the prior consent of the Division. The Division will advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be canceled on an undisturbed area.

860.200. Collateral Bonds.

860.210. Collateral bonds, except for letters of credit, cash accounts and real property, will be subject to the following conditions:

860.211. The Division will keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in R645-301-870 and R645-301-880;

860.212. The Division will value collateral at its current market value, not at face value;

860.213. The Division will require that certificates of deposit be made payable to or assigned to the Division both in writing and upon the records of the bank issuing the certificates. If assigned, the Division will require the banks issuing these certificates to waive all rights of setoff or liens against those certificates;

860.214. The Division will not accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

860.220. Letters of credit will be subject to the following conditions:

860.221. The letter may be issued only by a bank organized or authorized to do business in the United States;

860.222. Letters of credit will be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage will be forfeited and will be collected by the Division if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

860.223. The letter of credit will be payable to the Division upon demand, in part or in full, upon receipt from the Division of a notice of forfeiture issued in accordance with R645-301-880.900.

860.230. Real property posted as a collateral bond will meet the following conditions:

860.231. The applicant will grant the Division a first mortgage, first deed of trust, or perfected first lien security interest in real property with a right to sell or otherwise dispose of the property in the event of forfeiture under state law;

860.232. In order for the Division to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant will submit a schedule of the real property which will be mortgaged or pledged to secure the obligations under the indemnity agreement. The list will include:

860.232.1. A description of the property;

860.232.2. The fair market value as determined by an independent appraisal conducted by a certified appraiser approved by the Division; and

860.232.3. Proof of possession and title to the real property;

860.233. The property may include land which is part of the permit area; however, land pledged as collateral for a bond under this section will not be disturbed under any permit while it is serving as security under this section.

860.240. Cash accounts will be subject to the following conditions:

860.241. The Division may authorize the operator to supplement the bond through the establishment of a cash account in one or more federally insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the Division. The total bond including the cash account will not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with R645-301-880;

860.242. Any interest paid on a cash account will be retained in the account and applied to the bond value of the account unless the Division has approved the payment of interest to the operator;

860.243. Certificates of deposit may be substituted for a cash account with the approval of the Division; and

860.244. The Division will not accept an individual cash account in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

860.250. Bond Value of Collateral.

860.251. The estimated bond value of all collateral posted as assurance under this section will be subject to a margin which is the ratio of bond value to market values, as determined by the Division. The margin will reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations which might affect the net cash available to the Division to complete reclamation.

860.252. The bond value of collateral may be evaluated at any time, but it will be evaluated as part of the permit renewal and, if necessary, the performance bond amount increased or decreased. In no case will the bond value of collateral exceed the market value.

860.260. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, will request the notification in writing to the Division at the time collateral is offered.

860.300. Self-Bonding.

860.310. Definitions. Terms used in self-bonding are defined under R645-100-200.

860.320. The Division may accept a self bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor:

860.321. The applicant designates a suitable agent, resident within the state of Utah, to receive service of process;

860.322. The applicant has been in continuous operation

as a business entity for a period of not less than five years. Continuous operation will mean that business was conducted over a period of five years immediately preceding the time of application:

860.322.1. The Division may allow a joint venture or syndicate with less than five years of continuous operation to qualify under this requirement if each member of the joint venture or syndicate has been in continuous operation for at least five years immediately preceding the time of application;

860.322.2. When calculating the period of continuous operation, the Division may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed coal mining and reclamation operations;

860.323. The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

860.323.1. The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;

860.323.2. The applicant has a tangible net worth of at least $10 million, a ratio of total liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater; or

860.323.3. The applicant's fixed assets in the United States total at least $20 million and the applicant has a ratio of total liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater; and

860.324. The applicant submits:

860.324.1. Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

860.324.2. Unaudited financial statements for completed quarters in the current fiscal year;

860.324.3. Additional unaudited information as requested by the Division; and

860.324.4. Annual reports for the five years immediately preceding the time of application.

860.330. The Division may accept a written guarantee for an applicant's self bond from a parent corporation guarantor, if the guarantor meets the conditions of R645-301-860.321 through R645-301-860.324 as if it were the applicant. Such a written guarantee will be referred to as a "corporate guarantee." The terms of the corporate guarantee will provide for the following:

860.331. If the applicant fails to complete the reclamation plan, the guarantor will do so or the guarantor will be liable under the indemnity agreement to provide funds to the Division sufficient to complete the reclamation plan, but not to exceed the bond amount;

860.332. The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the Division at least 90 days in advance of the cancellation date, and the Division accepts the cancellation; and

860.333. The cancellation may be accepted by the Division if the applicant obtains a suitable replacement bond before the cancellation date or if the lands for which the self bond, or portion thereof, was accepted have not been disturbed.

860.340. The Division may accept a written guarantee for an applicant's self bond from any corporate guarantor, whenever the applicant meets the conditions of R645-301-860.321, R645-301-860.322, and R645-301-860.324 and the guarantor meets the conditions of R645-301-860.321 through R645-301-860.324 as if it were the applicant. Such a written guarantee will be referred to as a "nonparent corporate guarantee." The terms of this guarantee will provide for compliance with the conditions of R645-301-860.331 through R645-301-860.333. The Division may require the applicant to submit any information specified in R645-301-860-323 in order to determine the financial capabilities of the applicant.

860.350. For the Division to accept an applicant's self bond, the total amount of the outstanding and proposed self bonds of the applicant for coal mining and reclamation operations will not exceed 25 percent of the applicant's tangible net worth in the United States. For the Division to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self bonds and guaranteed self bonds for surface coal mining and reclamation operations will not exceed 25 percent of the guarantor's tangible net worth in the United States. For the Division to accept a nonparent corporate guarantee, the total amount of the nonparent corporate guarantor's present and proposed self bonds and guaranteed self bonds will not exceed 25 percent of the guarantor's tangible net worth in the United States.

860.360. If the Division accepts an applicant's self bond, an indemnity agreement will be submitted subject to the following requirements:

860.361. The indemnity agreement will be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and will bind each jointly and severally;

860.362. Corporations applying for a self bond, and parent and nonparent corporations guaranteeing an applicant's self bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Division along with an affidavit certifying that such an agreement is valid under all applicable federal and Utah laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self bond and execute the indemnity agreement.

860.363. If the applicant is a partnership, joint venture or syndicate, the agreement will bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant;

860.364. Pursuant to R645-301-880.900, the applicant, parent or nonparent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the Division an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.

860.365. The indemnity agreement when under forfeiture will operate as a judgment against those parties liable under the indemnity agreement.

860.370. The Division may require self-bonded applicants,

parent and nonparent corporate guarantors to submit an update of the information required under R645-301-860.323 and R645-301-860-324 within 90 days after the close of each fiscal year following the issuance of the self bond or corporate guarantee.

860.380. If at any time during the period when a self bond is posted, the financial conditions of the applicant, parent, or nonparent corporate guarantor change so that the criteria of R645-301-860.323 and R645-301-860.340 are not satisfied, the permittee will notify the Division immediately and will within 90 days post an alternate form of bond in the same amount as the self bond. Should the permittee fail to post an adequate substitute bond, the provisions of R645-301-840.500 will apply.

870. Replacement of Bonds.

870.100. The Division may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

870.200. The Division will not release existing performance bonds until the permittee has submitted, and the Division has approved, acceptable replacement performance bonds. Replacement of a performance bond pursuant to this section will not constitute a release of bond under R645-301-880.100 through R645-301-880.800.

880. Requirement to Release Performance Bonds.

880.100. Bond release application.

880.110. The permittee may file an application with the Division for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the Division in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation will be identified in the approved mining and reclamation plan.

880.120. Within 30 days after an application for bond release has been filed with the Division, the operator will submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the coal mining and reclamation operations. The advertisement will be considered part of any bond release application and will contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan and the name and address of the Division to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to R645-301-880.600 and R645-301-880.800. In addition, as part of any bond release application, the applicant will submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

880.130. The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

880.200. Inspection by the Division.

880.210. Upon receipt of the bond release application, the Division will, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation will consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution and the estimated cost of abating such pollution. The surface owner, agent or lessee will be given notice of such inspection and may participate with the Division in making the bond release inspection. The Division may arrange with the permittee to allow access to the permit area, upon request of any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

880.220. Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to R645-301-880.600, or, within 30 days after a public hearing has been held pursuant to R645-301-880.600, the Division will notify in writing the permittee, the surety or other persons with an interest in bond collateral who have requested notification under R645-301-860.260 and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, if its decision to release or not to release all or part of the performance bond.

880.300. The Division may release all or part of the bond for the entire permit area if the Division is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II and III:

880.310. At the completion of Phase I, after the operator completes the backfilling and regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area;

880.320. At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the Division will retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in UCA 40-10-17(t) of the Act for reestablishing revegetation. No part of the bond or deposit will be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by UCA 40-10-17(j) of the Act and by R645-301-751 or until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to UCA 40-10-11(4) of the Act and R645-301-200. Where a silt dam is to be retained as a permanent impoundment pursuant to R645-301-700, the Phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the operator

or the landowner have been made with the Division; and

880.330. At the completion of Phase III, after the operator has completed successfully all surface coal mining and reclamation operations, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in R645-301-357. However, no bond will be fully released under provisions of this section until reclamation requirements of the Act and the permit are fully met.

880.400. If the Division disapproves the application for release of the bond or portion thereof, the Division will notify the permittee, the surety, and any person with an interest in collateral as provided for in R645-301-860.260, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

880.500. When an application for total or partial bond release is filed with the Division, the Division will notify the municipality in which the coal mining and reclamation activities are located by certified mail at least 30 days prior to the release of all or a portion of the bond.

880.600. Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, will have the right to file written objections to the proposed release from bond with the Division within 30 days after the last publication of the notice required by R645-301-880.120. If written objections are filed and a hearing is requested, the Division will inform all the interested parties of the time and place of the hearing and will hold a public hearing within 30 days after receipt of the request for the hearing. The date, time and location of the public hearing will be advertised by the Division in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing will be held in the locality of the coal mining and reclamation operations from which bond release is sought, or at the location of the Division office, at the option of the objector.

880.700. For the purpose of the hearing under R645-301-880.600, the Division will have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing will be made and a transcript will be made available on the motion of any party or by order of the Division.

880.800. Without prejudice to the right of an objector or the applicant, the Division may hold an informal conference as provided in UCA 40-10-13(a) of the Act to resolve such written objections. The Division will make a record of the informal conference unless waived by all parties, which will be accessible to all parties. The Division will also furnish all parties of the informal conference with a written finding of the Division based on the informal conference and the reasons for said finding.

880.900. Forfeiture of Bonds.

880.910. If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the Division will take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

880.911. Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond including the reasons for the forfeiture and the amount to be forfeited. The amount will be based on the estimated total cost of achieving the reclamation plan requirements;

880.912. Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to:

880.912.1. Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan and the State Program and a demonstration that such party has the ability to satisfy the conditions; or

880.912.2. The Division may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the Division may approve partial release authorized under R645-301-880.100 through R645-301-880.800, no surety liability will be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of R645-301-820.300.

880.920. In the event forfeiture of the bond is required by this section, the Division will:

880.921. Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the Division, or if such appeal, if taken, is unsuccessful; and

880.922. Use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

880.930. Upon default, the Division may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Bond liability will extend to the entire permit area under conditions of forfeiture.

880.931. In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator will be liable for remaining costs. The Division may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

880.932. In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds will be returned by the Division to the party from whom they were collected.

890. Terms and Conditions for Liability Insurance.

890.100. The Division will require the applicant to submit

as part of its permit application a certificate issued by an insurance company authorized to do business in Utah certifying that the applicant has a public liability insurance policy in force for the coal mining and reclamation activities for which the permit is sought. Such policy will provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the coal mining and reclamation operations, including the use of explosives and who are entitled to compensation under the applicable provisions of state law. Minimum insurance coverage for bodily injury and property damage will be $300,000 for each occurrence and $500,000 aggregate.

890.200. The policy will be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations under this chapter.

890.300. The policy will include a rider requiring that the insurer notify the Division whenever substantive changes are made in the policy including any termination or failure to renew.

890.400. The Division may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable state self-insurance requirements approved as part of the State Program and the requirements of R645-301-890.100 through R645-301-890.300.

KEY: reclamation, coal mines
October 1, 2001 40-10-1 et seq.
Notice of Continuation June 6, 1997

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-2. Exploration.
R647-2-101. Filing Requirements and Review Procedures.

1. A complete Notice of Intention to Conduct Exploration (FORM MR-EXP) or a letter containing all the required information must be filed with the Division before exploration begins. It is recommended that the notice of intention be filed with the Division at least 30 days prior to the planned commencement of exploration.

2. Within 15 days after receipt of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter, the Division will review the proposal and notify the operator in writing:

2.11. That the notice of intention is complete; or

2.12. That the notice of intention is incomplete, and that additional information as identified by the Division will be required.

2.13. The Division will review any subsequent filings of information within 10 working days of receipt.

3. A notice of intention to conduct exploration will not require Division approval, unless more than five surface acres of disturbance is proposed. However, all of the required information must be provided to the Division. Division approval is required for all variances from Rule R647-2-107, 108, or 109, regardless of the number of surface acres of disturbance planned.

4. Exploration that will disturb more than five surface acres at any given time will require Division approval and a reclamation surety before exploration begins. (See Rule R647-2-111.)

5. Developmental drilling conducted within the disturbed area of an approved large mining operation or within the five acre disturbed area of a small mining operation does not require submittal of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter.

6. A permittee's retention of a notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

6.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for Exploration.

6.12. Fees are due beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature.

6.13. A permittee may avoid payment of the fee by complying with the following requirements:

6.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

6.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

6.14. All permit fees which remain uncollected 30 days after the due date will be turned over to the Utah Office of Debt Collection.

R647-2-102. Duration of the Notice of Intention.

A complete Notice of Intention to Conduct Exploration or comparable letter shall be valid until November 30th of the year following the year of submittal. All exploration and reclamation activities should be completed within this time frame. An operator desiring to extend the duration of a notice of intention, must notify the Division in writing, prior to expiration of the notice of intention, specifying the reasons an extension is required, and the anticipated length of time required to complete exploration and reclamation. Failure by the operator to pay permit fees required by R647-2-101(6) will suspend an operator's authorization to conduct exploration operations.

R647-2-103. Notice of Intention to Conduct Exploration.

The notice of intention shall address the requirements of the following rules:

TABLE

RULE #	SUBJECT
R647-2-104	Operator(s), Surface and Mineral Owner(s)
R647-2-105	Maps and Drawings
R647-2-106	Project Description
R647-2-107	Operation Practices
R647-2-108	Hole Plugging Requirements
R647-2-109	Reclamation Practices
R647-2-110	Variance

R647-2-104. Operator(s), Surface and Mineral Owner(s).

The notice of intention shall include the following general information:

1. The name, permanent mailing address, and telephone number of the operator responsible for exploration.

2. The name and permanent mailing address of the surface land owner(s) and mineral owner(s) of all land to be affected by the operations.

3. The federal mining claim number(s), lease number(s), or permit number(s) of any mining claims, federal or state leases or permits included in the land affected.

R647-2-105. Maps and Drawings.

A topographic base map showing the location of the proposed exploration project must be submitted with the notice of intention. A USGS 7.5 minute series map is preferred. The areas to be disturbed should be plotted on the map in sufficient detail so that they can be located on the ground. It is recommended that the operator also plot and label any previously disturbed areas in the immediate vicinity of the proposed exploration project for which the operator is not responsible.

R647-2-106. Project Description.

The notice of intention should include the following information:

1. A statement giving general details of the type or method of exploration proposed, including the proposed dates during which exploration will be conducted;

2. The type of minerals to be explored for;

3. The general dimensions of all drill holes, including total depth and diameter;

4. The general dimensions of all trenches, pits, shafts, cuts, or other types of disturbances;

5. The width and length of any new roads constructed;

6. An estimate of the total number of surface acres to be disturbed.

R647-2-107. Operation Practices.

The operator shall conform to the following practices while conducting exploration unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R647-2-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels are to be affected by exploration, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material, shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.

5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R647-2-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of operations.

1. Surface plugging of drill holes shall be accomplished by:

1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2-1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, the owner must notify the Division in writing accepting responsibility for the ultimate plugging of the drill hole.

2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:

2.12.111 Placing a 50 foot cement plug immediately above and below the aquifer(s); or

2.12.112 Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R647-2-109. Reclamation Practices.

The operator shall conform to the following practices while conducting reclamation unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

1.11. The permanent sealing of shafts and tunnels;

1.12. Appropriate disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R647-2-108;

1.14. The posting of appropriate warning signs in

locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by exploration, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the on-site area in a condition which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - On-site roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover. If the premining vegetative ground cover is unknown, the ground cover of an adjacent undisturbed area that is representative of the premining ground cover will be used as a standard. Also, the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. the Division determines that the revegetation work has been satisfactorily completed within practical limits; where reseeding has occurred and the vegetation has survived one growing season, the reseeded area shall not be included for purposes of determining whether future exploration or mining operations involve a disturbed area of five acres or less.

R647-2-110. Variance.

1. The operator may request a variance from Rule R647-2-107, 108, or 109, by submitting the following information, which shall be considered by the Division on a site-specific basis:

1.11. The rule(s) as to which a variance is requested;

1.12. The variance requested and description of the area that would be affected by the variance;

1.13. Justification for the variance;

1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R647-2-111. Surety.

1. The operator of an exploration project that will result in more than five surface acres being disturbed at any given time must post a reclamation surety prior to commencement of exploration. Disturbed areas which have been reclaimed are not included within the cumulative five acres for purposes of the reclamation surety.

2. The Division will not require a separate surety where a reclamation surety in a form and amount acceptable to the Division is held by the Division of Forestry, Fire and State Lands, The School and Institutional Trust Lands Administration, or an agency of the federal government.

3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on site-specific calculations reflecting the Division's cost to reclaim the site. An operator's reclamation estimate will be accepted if it is accurate and verifiable.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Division. Acceptable forms may include:

4.11. A corporate surety bond from a surety company that is licensed to do business in Utah, that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 4.11 will have 120 days from the date of Division notification after enactment of the changes to subsection 4.11 to achieve compliance or face enforcement action. When the Division in the course of examining surety bonds, notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 4.11., the operator has 120 days after notice from the Division by mail to correct the deficiency, or

face enforcement action;

4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining;

4.13. Cash;

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States;

4.15. Escrow accounts.

4.16. In addition, the Board may accept a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

6. Adjustments or revisions made in the surety amount shall be in accordance with the terms and conditions outlined in the Reclamation Contract.

R647-2-112. Failure to Reclaim.

If the operator fails or refuses to conduct reclamation as outlined in the complete notice of intention, the Board may, after notice and hearing, order that reclamation be conducted by the Division and that:

1. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; or

2. The surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where surety or a bond has been filed with the Division of Forestry, Fire and State Lands, The School and Institutional Trust Lands Administration or an agency of the federal government, the Board shall notify such agency of the hearing findings and request that the necessary forfeiture action be taken.

R647-2-113. Confidential Information.

Information provided in the notice of intention and in the Mineral Exploration Progress Report (FORM MR-EPR) that relates to the location, size, and nature of the mineral deposit, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator.

R647-2-114. Revised Notice.

Minor additions or changes in the location of exploration operations do not require the submittal of a revised notice of intention. A new or revised Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter must be submitted when:

1. The proposed additions or changes will occur outside the originally designated quarter section; or

2. The proposed additions will cause the total unreclaimed surface disturbance to exceed five (5) acres.

R647-2-115. Reports.

On or before December 31st of the year of filing of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter, the operator must submit a Mineral Exploration Progress Report (FORM MR-EPR), which describes any unusual drilling conditions, water encountered, hole plugging measures, and reclamation activities conducted.

R647-2-116. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in R647-5, shall be applicable to minerals regulatory proceedings.

KEY: minerals reclamation
October 1, 2001 **40-8-1 et seq.**
Notice of Continuation July 27, 1998

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-4. Large Mining Operations.
R647-4-101. Filing Requirements and Review Procedures.

A Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) or a letter containing all the required information must be approved by the Division before mining operations begin.

1. Within 30 days after receipt of a Notice of Intention, or within 30 days after receipt of any subsequent submittal, the Division will complete its review and notify the operator in writing:

1.11. That the notice of intention is complete; or

1.12. That the notice of intention is incomplete, and that additional information as identified by the Division will be required.

2. Within 30 days after receipt of the notice of intention or within 30 days following the last action of the operator or Division on the notice of intention, the Division shall reach a tentative decision with respect to the approval or denial of the notice of intention.

Notice of the tentative decision will then be published in accordance with Rule R647-4-116.

3. Division approval of the notice of intention and execution of the Reclamation Contract (FORM MR-RC) by the operator shall bind the Division and the operator in accordance with the Act and implementing regulations; and, shall enable the operator to conduct mining and reclamation activities in accordance therewith.

4. The operator must notify the Division within 30 days of beginning mining operations.

5. A permittee's retention of an approved notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

5.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for the following notices of intention.

5.11.11. Large Mining Operations (less than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.11.12. Large Mining Operations (greater than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.12. Fees are due beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature.

5.13. A permittee may avoid payment of the fee by complying with the following requirements:

5.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

5.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

5.14. All permit fees which remain uncollected 30 days after the due date will be turned over to the Utah Office of Debt Collection.

R647-4-102. Duration of the Notice of Intention.

The approved notice of intention, including any subsequently approved amendments or revisions, shall remain in effect for the life of the mine. However, the Division may review the permit and require updated information and modifications when warranted. Additionally, failure by the operator to pay permit fees required by R647-4-101(5) will suspend an operator's authorization to conduct mining operations and may after notice and hearing result in a withdrawal of the approved notice of intention.

R647-4-103. Notice of Intention to Commence Large Mining Operations.

The notice of intention shall address the requirements of the following rules:

TABLE

RULE #	SUBJECT
R647-4-104	Operator(s), Surface and Mineral Owner(s)
R647-4-105	Maps, Drawings and Photographs
R647-4-106	Operation Plan
R647-4-108	Hole Plugging Requirements
R647-4-109	Impact Assessment
R647-4-110	Reclamation Plan
R647-4-112	Variance

R647-4-104. Operator(s), Surface and Mineral Owner(s).

1. The name, permanent mailing address, and telephone number of the operator responsible for the mining operations and reclamation of the site.

2. The name, permanent mailing address, and telephone number of the surface landowner(s) and mineral owner(s) of all land to be affected by the operations.

3. The federal mining claim number(s), lease number(s), or permit number(s) of any mining claims, or federal or state leases or permits included in the lands affected.

R647-4-105. Maps, Drawings and Photographs.

1. A topographic base map must be submitted with the notice of intention. The scale should be approximately 1 inch = 2,000 feet, preferably a USGS 7.5 minute series or equivalent topographic map where available. The following information shall be included on the map:

1.11. Property boundaries of surface ownership of all lands which are to be affected by the mining operations;

1.12. Perennial streams, springs and other bodies of water, roads, buildings, landing strips, electrical transmission lines, water wells, oil and gas pipelines, existing wells, boreholes, or other existing surface or subsurface facilities within 500 feet of the proposed mining operations;

1.13. Proposed route of access to the mining operations from nearest publicly maintained highway. The map scale will be appropriate to show access.

1.14. Known areas which have been previously impacted by mining or exploration activities within the proposed disturbed area.

2. A surface facilities map shall be provided at a scale of approximately 1" = 500'. The following information shall be included on the surface facilities map:

2.11. Proposed surface facilities, including but not limited to buildings, stationary mining/processing equipment, roads,

utilities, power lines, proposed drainage control structures, and, the location of topsoil storage areas, tailings or processed waste facilities, disposal areas for overburden, solid and liquid wastes and wastewater discharge treatment and containment facilities;

2.12. A border clearly outlining the acreage proposed to be disturbed by mining operations.

3. The following maps, drawings or cross sections may be required by the Division:

3.11. Regraded Slopes to be left at steeper than 2h:1v;

3.12. Plans, profiles and cross sections of roads, pads or other earthen structures to be left as part of the postmining land use;

3.13. Water impounding structures with embankments greater than 20 feet in height from the upstream toe of the embankment or greater than 20 acre feet in storage capacity;

3.14. Maps identifying surface areas which will be disturbed by the operator but will not be reclaimed, such as solid rock slopes, cuts, roads, or sites of buildings or surface facilities to be left as part of the postmining land use;

3.15. Sediment ponds, diversion channels, culvert size and locations, and other hydrologic designs and features to be incorporated into the mining and reclamation plan;

3.16. Baseline information maps and drawings including soils, vegetation, watershed(s), geologic formations and structure, contour and other such maps which may be required for determination of existing conditions, operations, reclamation and postmining land use;

3.17. A reclamation activities and treatment map to identify the location and the extent of the reclamation work to be accomplished by the operator upon cessation of mining operations. This drawing shall be utilized to determine adequate bonding and reclamation practices for the site;

3.18. Other maps, plans, or cross sections as may reasonably be required by the Division.

4. The operator may submit photographs (prints) of the site sufficient to show existing vegetation and surface conditions. These photographs should show the general appearance and condition of the land to be affected and should be clearly marked as to the location, orientation and the date that the pictures were taken.

R647-4-106. Operation Plan.

The operator shall provide a narrative description referencing maps or drawings as necessary, of the proposed operations including:

1. Type of mineral(s) to be mined;

2. Type of operations to be conducted, including the mining/processing methods to be used on-site, and the identification of any deleterious or acid forming materials present or to be left on the site as a result of mining or mineral processing;

3. Estimated acreages proposed to be disturbed and/or reclaimed annually or sequentially;

4. A description of the nature of the materials to be mined or processed including waste/overburden materials and the estimated annual tonnages of ore and waste materials to be mined;

5. A description of existing soil types, including the location and extent of topsoil or suitable plant growth material. If no suitable soil material exists, an explanation of the conditions shall be given;

6. A description of the plan for protecting and redepositing existing soils;

7. A description of existing vegetative communities and cover levels, sufficient to establish revegetation success standards in accordance with Rule R647-4-111;

8. Depth to groundwater, extent of overburden material and geologic setting;

9. Proposed location and size of ore and waste stockpiles, tailings facilities and water storage/treatment ponds.

R647-4-107. Operation Practices.

During operations, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R647-4-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels are to be affected by the mining operation, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.

5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R647-4-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and shall not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can

prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of operations.

1. Surface plugging of drill holes shall be accomplished by:

1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2-1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, he must notify the Division in writing that he accepts responsibility for the ultimate plugging of the drill hole.

2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:

2.12.111 Placing a 50 foot cement plug immediately above and below the aquifer(s); or

2.12.112 Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R647-4-109. Impact Assessment.

The operator shall provide a general narrative description identifying potential surface and/or subsurface impacts. This description will include, at a minimum:

1. Projected impacts to surface and groundwater systems;

2. Potential impacts to state and federal threatened and endangered species or their critical habitats;

3. Projected impacts of the mining operation on existing soil resources;

4. Projected impacts of mining operations on slope stability, erosion control, air quality, and public health and safety;

5. Actions which are proposed to mitigate any of the above referenced impacts.

R647-4-110. Reclamation Plan.

Each notice of intention shall include a reclamation plan, including maps or drawings as necessary, consisting of a narrative description of the proposed reclamation including, but not limited to:

1. A statement of the current land use and the proposed postmining land use for the disturbed area;

2. A description of the manner and the extent to which roads, highwalls, slopes, impoundments, drainages, pits and ponds, piles, shafts and adits, drill holes, and similar structures will be reclaimed;

3. A detailed description of any surface facilities to be left as part of the postmining land use, including but not limited to buildings, utilities, roads, pads, ponds, pits and surface equipment;

4. A description of the treatment, location and disposition of any deleterious or acid-forming materials generated and left on-site, including a map showing the location of such materials upon the completion of reclamation;

5. A planting program as best calculated to revegetate the disturbed area.

5.11. Plans shall include, at a minimum, grading and/or stabilization procedures, topsoil replacement, seed bed preparation, seed mixture(s) and rate(s), and timing of seeding (fall seeding is preferred timing);

5.12. Where there is no original protective cover, an alternate practical procedure must be proposed to minimize or control erosion or siltation.

R647-4-111. Reclamation Practices.

During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

1.11. The permanent sealing of shafts and tunnels;

1.12. The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R647-4-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by mining operations, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or

minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the on-site area in a condition which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - On-site roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface, so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover. If the premining vegetative ground cover is unknown, the ground cover of an adjacent undisturbed area that is representative of the premining ground cover will be used as a standard. Also, the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. The Division determines that the revegetation work has been satisfactorily completed within practical limits.

R647-4-112. Variance.

1. The operator may request a variance from Rule R647-4-107, 108, or 111, by submitting the following information which will be considered by the Division on a site-specific basis:

1.11. The rule(s) as to which a variance is requested;

1.12. The variance requested and a description of the area that would be affected by the variance;

1.13. Justification for the variance;

1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R647-4-113. Surety.

1. After receiving notification that the notice of intention has been approved, but prior to commencement of operations, the operator shall provide the reclamation surety to the Division.

2. The Division will not require a separate surety when a reclamation surety in a form and amount acceptable to the Division is held by the Division of Forestry, Fire and State Lands, The School and Institutional Trust Lands Administration, or an agency of the federal government.

3. As part of the review of the notice of intention, the Division shall determine the final amount of surety required to reclaim the mine site. The surety amount will be based upon (a) the technical details of the approved mining and reclamation plan, (b) the proposed post mining land use, and (c) projected third party engineering and administrative costs to cover Division expenses incurred under a bond forfeiture circumstance. An operator's surety estimate will be accepted if it is accurate and verifiable. The Division may accept surety estimates based upon the Minerals Reclamation Program's average dollars per acre reclamation costs, if comparable to site specific cost estimates for similar operations.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Division, except as provided in subpart 4.16. Acceptable forms may include:

4.11. A corporate surety bond from a surety company that is licensed to do business in Utah, that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 4.11 will have 120 days from the date of Division notification after enactment of the changes to subsection 4.11 to achieve compliance or face enforcement action. When the Division in the course of examining surety bonds, notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 4.11., the operator has 120 days after notice from the Division by mail to correct the deficiency, or face enforcement action;

4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining;

4.13. Cash;

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States;

4.15. Escrow accounts.

4.16. The Board may accept a written self-bonding

agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

6. Adjustments or revisions made in the surety amount shall be in accordance with the terms and conditions outlined in the Reclamation Contract.

R647-4-114. Failure to Reclaim.

If the operator fails or refuses to conduct reclamation as outlined in the approved notice of intention, the Board may, after notice and hearing, order that reclamation be conducted by the Division and that:

1. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; or

2. Any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where surety or a bond has been filed with the Division of Forestry, Fire and State Lands, The School and Institutional Trust Lands Administration or an agency of the federal government, the Board shall notify such agency of the hearing findings, and request that the necessary forfeiture action be taken.

R647-4-115. Confidential Information.

Information provided in the notice of intention relating to the location, size, and nature of the mineral deposit, and marked confidential by the operator, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator, or until the notice of intention is terminated.

R647-4-116. Public Notice and Appeals.

1. Public notice will be deemed complete when the following actions have been taken:

(1.) A description of the disturbed area and the tentative decision to approve or disapprove the notice of intention shall be published by the Division in abbreviated form, one time only, in all newspapers of general circulation published in the county or counties where the land affected is situated, and in a daily newspaper of general circulation in Salt Lake City, Utah.

(2.) A copy of the abbreviated information and tentative decision shall also be mailed by the Division to the zoning authority of the county or counties in which the land affected is situated and to the owner or owners of record of the land affected, as described in the notice of intention.

2. Any person or agency aggrieved by the tentative decision may file a written protest with the Division, during the public comment period identified in the notice, setting forth factual reasons for the complaint.

3. If no responsive written protests are received by the Division within 30 days after the last date of publication, the tentative decision of the Division on the notice of intention shall be final and the operator will be so notified.

4. If written objections of substance are received by the Division during the public comment period, a hearing shall be held before the Division in accordance with UCA 40-8-13, following which hearing the Division shall issue its decision.

R647-4-117. Notification of Suspension or Termination of Operations.

1. The operator need not notify the Division of the temporary suspension of mining operations.

2. In the case of a termination or a suspension of mining operations that has exceeded, or is expected to exceed two (2) years, the operator shall, upon request, furnish the Division with such data as it may require to evaluate the status of the mining operation, the status of compliance with these rules, and the probable future status of the land affected. Upon review of such data, the Division will take such action as may be appropriate. The Division may grant an extended suspension period if warranted by a showing of good cause by the operator.

3. The operator shall give the Division prompt written notice of a termination or suspension of large mining operations expected to exceed five (5) years. Upon receipt of notification, the Division shall, within 30 days, make an inspection of the property.

4. Large mining operations that have been approved for an extended suspension period will be reevaluated on a regular basis. Additional interim reclamation or stabilization measures may be required in order for a large mining operation to remain in a continued state of suspension. Reclamation of a large mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of the 10-year period and shows good cause for a longer suspension period.

R647-4-118. Revisions.

1. In order to revise a notice of intention, an operator shall file a Notice of Intention to Revise Large Mining Operations (FORM MR-REV). This notice of intention will include all information concerning the revision that would have been required in the original notice of intention.

2. A Notice of Intention to Revise Large Mining Operations (FORM MR-REV) will be processed and considered for approval by the Division in the same manner as an original notice of intention. The operator will be authorized and bound by the requirements of the existing approved notice until the revision is acted upon and any revised surety requirements are satisfied. Those portions of the approved notice of intention not subject to the revision will not be subject to review under this provision.

3. Large mining operations which have a disturbed area of five (5) acres or less may refile as a small mining operation. Reclaimed areas must meet full bond release requirements before they can be excluded from the disturbed acreage.

R647-4-119. Amendments.

1. An amendment is an insignificant change to the

approved notice of intention. The Division will review the change and make the determination of significance on a case-by-case basis.

2. A request for an amendment should be filed on the Notice of Intention to Revise Large Mining Operations (FORM MR-REV). An amendment of a large mining operation requires Division approval but does not require public notice.

R647-4-120. Transfer of Notice of Intention.

If an operator wishes to transfer a mining operation to another party, an application for Transfer of Notice of Intention - Large Mining Operations (FORM MR-TRL), must be completed and filed with the Division. The new mine operator will be required to post a new reclamation surety and must assume full responsibility for continued mining operations and reclamation.

R647-4-121. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting large mining operations must file an Annual Report of Mining Operations (FORM MR-AR) describing its operations during the preceding calendar year. Form MR-AR, includes:

1.11. The location of the operation and file number of the approved notice of intention;

1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials;

1.13. The reclamation work performed during the year and new surface disturbances created during the year.

2. The operator shall include an updated map depicting surface disturbance and reclamation performed during the year, prepared in accordance with Rule R647-4-105.

3. The operator shall keep and maintain timely records relating to his performance under the Act, and shall make these records available to the Division upon request.

R647-4-122. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the R647-5 Rules, shall be applicable to minerals regulatory proceedings.

KEY: minerals reclamation
October 1, 2001 **40-8-1 et seq.**
Notice of Continuation July 27, 1998

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-3. Drilling and Operating Practices.
R649-3-1. Bonding.

1. An owner or operator shall furnish a bond to the division prior to approval of a permit to drill a new well, reenter an abandoned well or assume responsibility as operator of existing wells.

1.1. An owner or operator shall furnish a bond to the division on Form 4, for wells located on lands with fee or privately owned minerals.

1.2. An owner or operator shall furnish evidence to the division that a bond has been filed in accordance with state, federal or Indian lease requirements and approved by the appropriate agency for all wells located on state, federal or Indian leases.

2. A bond furnished to the division shall be payable to the division and conditioned upon the faithful performance by the operator of the duty to plug each dry or abandoned well, repair each well causing waste or pollution, and maintain and restore the well site.

3. Bond coverage previously established by an operator of existing wells shall be considered adequate by the division upon the adoption of these rules. In the future, bond coverage for drilling, or reentering a well or for a replacement bond if required for any reason, shall be considered in accordance with these rules.

4. Bond liability shall be for the duration of the drilling, operating and plugging of the well and restoration of the well site.

4.1. The bond shall remain in full force and effect until liability thereunder is released by the division.

4.2. Release of liability shall be conditioned upon compliance with the rules and orders of the board.

5. The bond amount for wells located on lands with fee or privately owned minerals shall be one of the following:

5.1. For wells of less than 1,000 feet in depth, an individual well bond in the amount of $1,000, for each such well.

5.2. For wells of more that 1,000 feet in depth but less than 3,000 feet in depth, an individual well bond in the amount of $10,000 for each such well.

5.3. For wells of more that 3,000 feet in depth but less than 10,000 feet in depth, an individual well bond in the amount of $20,000 for each such well.

5.4. For wells of more than 10,000 feet in depth, an individual well bond in the amount of $40,000 for each such well.

6. If an operator is drilling or operating more than one well on lands with fee or privately owned minerals, a blanket bond may be furnished in lieu of individual well bonds.

6.1. A blanket bond shall be conditioned in a manner similar to individual well bonds and shall cover all wells that the operator may drill or operate on lands with fee or privately owned minerals within the state.

6.2. For wells of less than 1,000 feet in depth, a blanket bond in the amount of $10,000 shall be required.

6.3. For wells of more than 1,000 feet in depth, a blanket bond in the amount of $80,000 shall be required.

7. If an operator desires bond coverage in a lesser amount than required by these rules, the operator may file a Request for Agency Action with the board for a variance from the requirements of these rules.

7.1. Upon proper notice and hearing and for good cause shown, the board may allow bond coverage in a lesser amount for specific wells.

8. If after reviewing an application to drill or reenter a well, the division determines that bond coverage in accordance with these rules will be insufficient to cover the costs of plugging the well and restoring the well site, the division may request a hearing before the board for its consideration of a greater bond coverage.

8.1 Upon proper notice and hearing and for good cause shown, the board may allow bond coverage in a greater amount for specific wells.

9. The bond shall provide a mechanism for the surety or other guarantor of the bond, to provide prompt notice to the division and the operator of any action alleging the insolvency or bankruptcy of the surety or guarantor, or alleging any violations which would result in suspension or revocation of the surety's or guarantor's charter or license to do business.

9.1. Upon the incapacity of the surety or guarantor to guarantee payment of the bond by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the operator shall be deemed to be without bond coverage.

9.2. Upon notification of insolvency or bankruptcy, the division shall notify the operator in writing and shall specify a reasonable period, not to exceed 90 days, to provide bond coverage.

9.3. If an adequate bond is not furnished within the allowed period, the operator shall be required to cease operations immediately, and shall not resume operations until the division has received an acceptable bond.

10. The division shall accept a bond in the form of a surety bond, a collateral bond or a combination of these bonding methods.

10.1. A surety bond is an indemnity agreement in a sum certain payable to the division, executed by the operator as principal and which is supported by the performance guarantee of a corporation authorized to do business as a surety in Utah.

10.1.1. A surety bond shall be executed by the operator and a corporate surety authorized to do business in Utah that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 10.1.1. will have 120 days from the date of Division notification after enactment of the changes to subsection 10.1.1., or face enforcement action. When the Division in the course of examining surety bonds notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 10.1.1., the operator has 120 days after notice from the Division by mail to correct the deficiency, or face enforcement action.

10.1.2. Surety bonds shall be noncancellable during their terms, except that surety bond coverage for wells not drilled

may be canceled with the prior consent of the division.

10.1.3. The division shall advise the surety, within 30 days after receipt of a notice to cancel a bond, whether the bond may be canceled on an undrilled well.

10.2. A collateral bond is an indemnity agreement in a sum certain payable to the division, executed by the operator which is supported by one or more of the following:

10.2.1. A cash account.

10.2.1.1. The operator may deposit cash in one or more accounts at a federally insured bank authorized to do business in Utah, made payable upon demand only to the division.

10.2.1.2. The operator may deposit the required amount directly with the division.

10.2.1.3. Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the division has approved the payment of interest to the operator.

10.2.1.4. The division shall not accept an individual cash account in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

10.2.2. Negotiable bonds of the United States, a state, or a municipality.

10.2.2.1. The negotiable bond shall be endorsed only to the order of and placed in the possession of the division.

10.2.2.2. The division shall value the negotiable bond at its current market value, not at face value.

10.2.3. Negotiable certificates of deposit.

10.2.3.1. The certificates shall be issued by a federally insured bank authorized to do business in Utah.

10.2.3.2. The certificates shall be made payable or assigned only to the division both in writing and upon the records of the bank issuing the certificate.

10.2.3.3. The certificates shall be placed in the possession of the division or held by a federally insured bank authorized to do business in Utah.

10.2.3.4. If assigned, the division shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates.

10.2.3.5. The division shall not accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

10.2.4. An irrevocable letter of credit.

10.2.4.1. Letters of credit shall be placed in the possession of and payable upon demand only to the division.

10.2.4.2. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah.

10.2.4.3. Letters of credit shall be irrevocable during their terms.

10.2.4.4. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least 30 days before their expiration date with other acceptable bond types or letters of credit.

11. The required bond amount specified in R649-3-1.5 of all collateral posted as assurance under this section shall be subject to a margin determined by the division which is the ratio of the face value of the collateral to market value, as determined by the division.

11.1. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations which might affect the net cash available to the division to complete plugging and restoration.

12. The market value of collateral may be evaluated at any time, and in no case shall the market value of collateral be less than the required bond amount specified in R649-3-1.5.

12.1. Upon evaluation of the market value of collateral by the division, the division will notify the operator of any required changes in the amount of the bond and shall allow a reasonable period, not to exceed 90 days, for the operator to establish acceptable bond coverage.

12.2. If an adequate bond is not furnished within the allowed period the operator shall be required to cease operations immediately and shall not resume operations until the division has received an acceptable bond.

13. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing from the division at the time collateral is offered.

14. The division may allow the operator to replace existing bonds with other bonds that provide equivalent coverage.

14.1. Replacement of a bond pursuant to this section shall not constitute a release of bond under R649-3-1.15.

14.2. The division shall not allow liability to cease under an existing bond until the operator has furnished, and the division has approved, an acceptable replacement bond.

14.3. Transfer of the ownership of property does not cancel liability under an existing bond.

14.4. If a transfer of the ownership of property is made, then the following requirements shall be met:

14.4.1. The operator shall notify the division in writing when ownership of any well associated with the property has been transferred to a named transferee.

14.4.2. The notice shall describe each well by reference to its well name and number, API number, and its location, as described by the section, township, range, and county.

14.4.3. The notice shall contain the endorsement of the new operator accepting such transfer of ownership.

14.4.4. The notice may include a request to cancel liability under the bond upon receipt by the division of an adequate replacement bond in the name of the new operator.

14.5. Within 30 days of the receipt by the division of the notice of transfer of ownership, the new operator shall do one of the following:

14.5.1. Submit a new bond.

14.5.2. Accept responsibility for the wells under an existing blanket bond.

14.5.3. Produce the written consent of the operator and, if applicable, surety of the previous bond that their responsibility shall continue with respect to the new operator.

14.6. When the division has approved the termination of liability under a bond in accordance with R649-3-1.14.2 and R649-3-1.14.3, the original operator is relieved from the responsibility of plugging or repairing any wells and restoring any well site affected by the transfer of ownership.

14.7. If all of the wells covered by a bond are affected by a transfer of ownership, the bond may be released by the

division in accordance with R649-3-15.

15. Bond release procedures are as follows:

15.1. Requests for release of a bond held by the division may be submitted by the operator at any time after a subsequent notice of plugging of a well has been submitted to the division.

15.1.1. Within 30 days after a request for bond release has been filed with the division, the operator shall submit signed affidavits from the surface landowner of the well site certifying that restoration has been performed as required by the mineral lease and surface agreements.

15.1.2. If such affidavits are not submitted, the division shall conduct an inspection of the well site in preparation for bond release as explained in R649-3-1.15.2.

15.1.3. Within 30 days after a request for bond release has been filed with the division, the division shall publish notice of the request in a daily newspaper of general circulation in the city and county of Salt Lake and in a newspaper of general circulation in the county in which the proposed well is located.

15.1.4. If a written objection to the request for bond release is not received by the division within 15 days after publication of the notice of request, the division may release liability under the bond as an administrative action.

15.1.5. If a written objection to the request for bond release is received by the division within 15 days after publication of the notice of request, the request shall be set for hearing and notice thereof given in accordance with the procedural rules of the board.

15.2. If affidavits supporting the bond release application are not received by the division in accordance with R649-3-1.15.1, the division shall within 30 days or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the well site to determine if restoration has been adequately performed.

15.2.1. The operator shall be given notice by the division of the date and time of the inspection, and if the operator is unable to attend the inspection at the scheduled date and time, the division may reschedule the inspection to allow the operator to participate.

15.2.2. The surface landowner, agent or lessee shall be given notice by the operator of such inspection and may participate in the inspection; however, if the surface landowner is unable to attend the inspection, the division shall not be required to reschedule the inspection in order to allow the surface landowner to participate.

15.2.3. The evaluation shall consider the adequacy of well site restoration, the degree of difficulty to complete any remaining restoration, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution.

15.2.4. Upon request of any person with an interest in bond release, the division may arrange with the operator to allow access to the well site or sites for the purpose of gathering information relevant to the bond release.

15.2.5. The division shall retain a record of the inspection and the evaluation, and if necessary and upon written request by an interested party, the division shall provide a copy of the results.

15.3. Within 60 days from the filing of the bond release request, if a public hearing is not held pursuant to R649-3-1.15.1, or within 30 days after such public hearing has been held, the division shall provide written notification of the decision to release or not release the bond to the following parties:

15.3.1. The operator.

15.3.2. The surety or other guarantor of the bond.

15.3.3. Other persons with an interest in bond collateral who have requested notification under R649-3-1.13.

15.3.4. The persons who filed objections to the notice of application for bond release.

15.4. If the decision is made to release the bond, the notification specified in R649-3-1.15.3 shall also state the effective date of the bond release.

15.5. If the division disapproves the application for release of the bond or portion thereof, the notification specified in R649-3-1.15.3 shall also state the reasons for disapproval, recommending corrective actions necessary to secure the release, and allowing an opportunity for a public hearing.

15.6. The division shall notify the municipality in which the well is located by certified mail at least 30 days prior to the release of the bond.

16. The following guidelines will govern the Forfeiture of Bonds.

16.1. The division shall take action to forfeit the bond if any of the following occur:

16.1.1. The operator refuses or is unable to conduct plugging and site restoration.

16.1.2. Noncompliance as to the conditions of a permit issued by the division.

16.1.3. The operator defaults on the conditions under which the bond was accepted.

16.2. In the event forfeiture of the bond is necessary, the matter will be considered by the board.

16.3. For matters of bond forfeiture, the division shall send written notification to the parties identified in R649-3-1.15.3, in addition to the notice requirements of the board procedural rules.

16.4. After proper notice and hearing, the board may order the division to do any of the following:

16.4.1. Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts.

16.4.2. Use funds collected from bond forfeiture to complete the plugging and restoration of the well or wells to which bond coverage applies.

16.4.3. Enter into a written agreement with the operator or another party to perform plugging and restoration operations in accordance with a compliance schedule established by the division as long as such party has the ability to perform the necessary work.

16.4.4. Allow a surety to complete the plugging and restoration, if the surety can demonstrate an ability to complete the plugging and restoration.

16.4.5. Any other action the board deems reasonable and appropriate.

16.5. In the event the amount forfeited is insufficient to pay for the full cost of the plugging and restoration, the division may complete or authorize completion of plugging and

restoration and may recover from the operator all costs of plugging and restoration in excess of the amount forfeited.

16.6. In the event the amount of bond forfeited was more than the amount necessary to complete plugging and restoration, the unused funds shall be returned by the division to the party from whom they were collected.

16.7. In the event the bond is forfeited and there exists any unplugged well or wells previously covered under the forfeited bond, then the operator must establish new bond coverage in accordance with these rules.

16.8. If the operator requires new bond coverage under the provisions of R649-3-1.16.7, then the division will notify the operator and specify a reasonable period, not to exceed 90 days, to establish new bond coverage.

R649-3-2. Location And Siting Of Vertical Wells and Statewide Spacing for Horizontal Wells.

1. In the absence of special orders of the board establishing drilling units or authorizing different well density or location patterns for particular pools or parts thereof, each oil and gas well shall be located in the center of a 40 acre quarter-quarter section, or a substantially equivalent lot or tract or combination of lots or tracts as shown by the most recent governmental survey, with a tolerance of 200 feet in any direction from the center location, a "window" 400 feet square. No oil or gas well shall be drilled less than 920 feet from any other well drilling to or capable of producing oil or gas from the same pool, and no oil or gas well shall be completed in a known pool unless it is located more than 920 feet from any other well completed in and capable of producing oil or gas from the same pool.

2. The division shall have the administrative authority to determine the pattern location and siting of wells adjacent to an area for which drilling units have been established or for which a request for agency action to establish drilling units has been filed with the board and adjacent to a unitized area, where there is sufficient evidence to indicate that the particular pool underlying the drilling unit or unitized area may extend beyond the boundary of the drilling unit or unitized area and the uniformity of location patterns is necessary to ensure orderly development of the pool.

3. In the absence of special orders of the Board, no portion of the horizontal interval within the potentially productive formation shall be closer than six hundred-sixty (660) feet to a drilling or spacing unit boundary, federally unitized area boundary, uncommitted tract within a unit, or boundary line of a lease not committed to the drilling of such horizontal well.

4. The surface location for a horizontal well may be anywhere on the lease.

5. Any horizontal interval shall be not closer than one thousand three hundred and twenty (1,320) feet to any vertical well completed in and producing from the same formation. Vertical wells drilled to and completed in the same formation as in a horizontal well are subject to applicable drilling unit orders of the board or the other conditions of this rule which do not specifically pertain to horizontal wells and may be drilled and produced as provided therein.

6. A temporary six hundred and forty (640) acre spacing unit, consisting of the governmental section in which the horizontal well is located, is established for the orderly development of the anticipated pool.

7. In addition to any other notice required by the statute or these rules, notice of the Application for Permit to Drill for a horizontal well shall be given by certified mail to all owners within the boundaries of the designated temporary spacing unit.

8. Horizontal wells to be located within federally supervised units are exempt from the above referenced conditions of 5, 6 and 7.

9. Exceptions to any of the above referenced conditions of 3 through 7 may be approved upon proper application pursuant to R649-3-3, Exception to Location and Siting of Wells, or R649-10, Administrative Procedures.

10. Additional horizontal wells may be approved by order of the Board after hearing brought upon by a Request for Agency Action (Petition) filed in accordance with the Board's Procedural Rules.

R649-3-3. Exception to Location and Siting of Wells.

1. The division shall have the administrative authority to grant an exception to the locating and siting requirements of R649-3-2 or an order of the board establishing oil or gas well drilling units after receipt from the operator of the proposed well of the following items:

1.1. Proper written application for the exception well location.

1.2. Written consent from all owners within a 460 foot radius of the proposed well location when such exception is to the requirements of R649-3-2, or;

1.3. Written consent from all owners of directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas well drilling units.

2. If for any reason the division shall fail or refuse to approve such an exception, the board may, after notice and hearing, grant an exception.

3. The application for an exception to R649-3-2 or board drilling unit order shall state fully the reasons why such an exception is necessary or desirable and shall be accompanied by a plat showing:

3.1. The location at which an oil or gas well could be drilled in compliance with R649-3-2 or Board drilling unit order.

3.2. The location at which the applicant requests permission to drill.

3.3. The location at which oil or gas wells have been drilled or could be drilled, in accordance with R649-3-2 or board drilling unit order, directly or diagonally offsetting the proposed exception.

3.4. The names of owners of all lands within a 460 foot radius of the proposed well location when such exception is to the requirements of R649-3-2, or

3.5. The names of owners of all directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas drilling units.

4. No exception shall prevent any owner from drilling an oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by R649-3-2, or any applicable order of the board establishing oil or gas well drilling units for the pool involved.

5. Whenever an exception is granted, the board or the division may take such action as will offset any advantage that the person securing the exception may obtain over other producers by reason of the exception location.

R649-3-4. Permitting of Wells to be Drilled, Deepened or Plugged-Back.

1. Prior to the commencement of drilling, deepening or plugging back of any well, exploratory drilling such as core holes and stratigraphic test holes, or any surface disturbance associated with such activity, the operator shall submit Form 3, Application for Permit to Drill, Deepen, or Plug Back and obtain approval. Approval shall be given by the division if it appears that the contemplated location and operations are not in violation of any rule or order of the board for drilling a well.

2. The following information shall be included as part of the complete Application for Permit to Drill, Deepen, or Plug Back.

2.1. The telephone number of the person to contact if additional information is needed.

2.2. Proper identification of the lease as state, federal, Indian, or fee.

2.3. Proper identification of the unit, if the well is located within a unit.

2.4. A plat or map, preferably on a scale of one inch equals 1,000 feet, prepared by a licensed surveyor or engineer, which shows the proposed well location. For directional wells, both surface and bottomhole locations should be marked.

2.5. A copy of the Division of Water Rights approval or the identifying number of the approval for use of water at the drilling site.

2.6. A drilling program containing the following information shall also be submitted as part of a complete APD.

2.6.1. The estimated tops of important geologic markers.

2.6.2. The estimated depths at which the top and the bottom of anticipated water, oil, gas, or other mineral-bearing formations are expected to be encountered, and the owner's or operator's plans for protecting such resources.

2.6.3. The owner's or operator's minimum specifications for pressure control equipment to be used and a schematic diagram thereof showing sizes, pressure ratings or API series, proposed testing procedures and testing frequency.

2.6.4. Any supplementary information more completely describing the drilling equipment and casing program as required by Form 3, Application for Permit to Drill, Deepen, or Plug Back.

2.6.5. The type and characteristics of the proposed circulating medium or mediums to be employed in drilling, the quantities and types of mud and weighting material to be maintained, and the monitoring equipment to be used on the mud system.

2.6.6. The anticipated type and amount of testing, logging, and coring.

2.6.7. The expected bottomhole pressure and any anticipated abnormal pressures or temperatures or potential hazards, such as hydrogen sulfide, expected to be encountered, along with contingency plans for mitigating such identified hazards.

2.6.8. Any other facets of the proposed operation which the lessee or operator desires to point out for the division's consideration of the application.

2.6.9. If an Application for Permit to Drill, Deepen, or Plug Back is for a proposed horizontal well, a horizontal well diagram clearly showing the well bore path from the surface through the terminus of the lateral shall be submitted.

2.7. Form 5, Designation of Agent or Operator shall be filed when the operator is a person other than the owner.

2.8. If located on State or Fee surface, an APD will not be approved until an Onsite Predrill Evaluation is performed as outlined in R649-3-18.

3. Two legible copies, carbon or otherwise, of the APD filed with the appropriate federal agency may be used in lieu of the forms prescribed by the board.

4. Approval of the APD shall be valid for a period of 12 months from the date of such approval. Upon approval of an APD, a well will be assigned an API number by the division. The API number should be used to identify the permitted well in all future correspondence with the division.

5. If a change of location or drilling program is desired, an amended APD shall be filed with the division and its approval obtained. If the new location is at an authorized location in the approved drilling unit, or the change in drilling program complies with the rules for that area, the change may be approved verbally or by telegraph. Within five days after obtaining verbal or telegraphic authorization, the operator shall file a written change application with the division.

6. After a well has been completed or plugged and abandoned, it shall not be reentered without the operator first submitting a new APD and obtaining the division's approval. Approval shall be given if it appears that a bond has been furnished or waived, as required by R649-3-1, Bonding, and the contemplated work is not in violation of any rule or order of the board.

7. An operator or owner who applies for an APD in an area not subject to a special order of the board establishing drilling units, may contemporaneously or subsequently file a Request for Agency Action to establish drilling units for an area not to exceed the area reasonably projected by the operator or owner to be underlaid by the targeted reservoir.

8. An APD for a well within the area covered by a proper Request for Agency Action which has been filed by an interested person, or the division or the board on its own motion, for the establishment of drilling units or the revision of existing drilling units for the spacing of wells shall be held in abeyance by the division until such time as the matter has been noticed, fully heard and determined.

9. An exception to R649-3-4-8 shall be made and a permit shall be issued by the division if an owner or operator files a sworn statement demonstrating to the division's satisfaction that on and after the date the Request for Agency Action requesting the establishment of drilling units was filed, or the action of the division or board was taken; and

9.1. The owner or operator has the right or obligation under the terms of an existing contract to drill the requested well; or

9.2. The owner or operator has a leasehold estate or right to acquire a leasehold estate under a contract that will be terminated unless he is permitted to commence the drilling of

the required well before the matter can be fully heard and determined by the board.

R649-3-5. Identification.

Every drilling and producible well shall be identified by a sign posted on the derrick or in a conspicuous place near the well. The sign shall be of durable construction. The lettering on the sign shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of 25 feet. The wells on each lease or property shall be numbered in nonrepetitive, logical, and distinctive sequence. Each sign shall show the number of the well, the name of the owner or operator, the lease name, and the location of the well by quarter section, township, and range.

R649-3-6. Drilling Operations.

1. Drilling operations shall be conducted according to the drilling program submitted on the original APD and as approved by the division. Any change of plans to the original drilling program shall be submitted to the division by using Form 9, Sundry Notices and Reports on Wells and shall receive division approval prior to implementation. A change of plans necessary because of emergency conditions may be implemented without division approval. The operator shall provide the division with verbal notice of the emergency change within 24 hours and written notice within five days.

2. An operator of a drilling well as designated in R649-2-4 shall comply with reporting requirements as follows:

2.1. The spudding in of a well shall be reported to the division within 24 hours. The report should include the well name and number, drilling contractor, rig number and type, spud date and time, the date that continuous drilling will commence, the name of the person reporting the spud, and a contact telephone number.

2.2. The operator shall file Form 6, Entity Action Form with the division within five working days of spudding in a well. The division will assign the well an entity number which will identify the well on the operator's monthly oil and gas production and disposition reports.

2.3. The operator shall notify the division 24 hours in advance of all testing to be performed on the blowout preventor equipment on a well.

2.4. The operator shall submit a monthly status report for each drilling well on Form 9, Sundry Notices and Reports on Wells. The report should include the well depth and a description of the operations conducted on the well during the month. The report shall be submitted no later than the fifth day of the following calendar month until such time as the well is completed and the well completion report is filed.

2.5. The operator shall notify the division 24 hours in advance of all casing tests performed in accordance with R649-3-13.

2.6. The operator shall report to the division all fresh water sand encountered during drilling on Form 7, Report of Water Encountered During Drilling, The report shall be filed with Form 8, Well Completion or Recompletion Report and Log.

R649-3-7. Well Control.

1. When drilling in wildcat territory, the owner or operator shall take all reasonably necessary precautions for keeping the well under control at all times and shall provide, at the time the well is started, proper high pressure fittings and equipment. All pressure control equipment shall be maintained in good working condition at all times.

2. In all proved areas, the use of blowout prevention equipment "BOPE" shall be in accordance with the established and approved practice in the area. All pressure control equipment shall be maintained in good working condition at all times.

3. Upon installation, all ram type BOPE and related equipment, including casing, shall be tested to the lesser of the full manufacturer's working pressure rating of the equipment, 70% of the minimum internal yield pressure of any casing subject to test, or one psi/ft of the last casing string depth. Annular type BOPE are to be tested in conformance with the manufacturer's published recommendations. The operator shall maintain records of such testing until the well is completed and will submit copies of such tests to the division if required.

4. In addition to the initial pressure tests, ram and annular type preventers shall be checked for physical operation each trip. All BOPE components, with the exception of an annular type blowout preventer, shall be tested monthly to the lesser of 50% of the manufacturer's rated pressure of the BOPE, the maximum anticipated pressure to be contained at the surface, one psi/ft of the last casing string depth, or 70% of the minimum internal yield pressure of any casing subject to test.

5. If a pressure seal in the assembly is disassembled, a test of that seal shall be conducted prior to the resumption of any drilling operation. A shell test of the affected seal shall be adequate. If the affected seal is integral with the BOP stack, either pipe or blind ram, necessitating a test plug to be set in order to test the seal, the division may grant approval to proceed without testing the seal if necessary for prudent operations.

6. All tests of BOPE shall be noted on the driller's log, IADC report book, or equivalent and shall be available for examination by the director or an authorized agent during routine inspections.

7. BOPE used in possible or probable hydrogen sulfide or sour gas formations shall be suitable for use in such areas.

R649-3-8. Casing Program.

1. The method of cementing casing in the hole shall be by pump and plug method, displacement method, or other method approved by the division.

2. When drilling in wildcat territory or in any field where high pressures are probable, the conductor and surface strings of casing must be cemented throughout their lengths, unless another procedure is authorized or prescribed by the division, and all subsequent strings of casing must be securely anchored.

3. In areas where the pressures and formations to be encountered during drilling are known, sufficient surface casing shall be run to:

3.1. Reach a depth below all known or reasonably estimated, utilizable, domestic, fresh water levels.

3.2. Prevent blowouts or uncontrolled flows.

4. The casing program adopted must be planned to protect any potential oil or gas horizons penetrated during drilling from infiltration of waters from other sources and to prevent the

migration of oil, gas, or water from one horizon to another.

R649-3-9. Protection Of Upper Productive Strata.

1. No well shall be deepened for the purpose of producing oil or gas from a lower stratum until all upper productive strata are protected, either permanently by casing and cementing or temporarily through the use of tubing and packer, to the satisfaction of the division.

2. In any well that appears to have defective, poorly cemented, or corroded casing that will permit or may create underground waste or may contaminate underground or surface fresh water, the operator shall proceed with diligence to use the appropriate method and means to eliminate such hazard of underground waste or contamination of fresh water. If such hazard cannot be eliminated, the well shall be properly plugged and abandoned.

3. Natural gas that is encountered in substantial quantities in any section of a cable tool drilled hole above the ultimate objective shall be shut off with reasonable diligence, either by mudding, casing or other approved method, and shall be confined to its original source to the satisfaction of the division.

R649-3-10. Tolerances For Vertical Drilling.

Deviation from the vertical for short distances is permitted in the drilling of a well without special approval to straighten the hole, sidetrack junk, or correct other mechanical difficulties. All wells shall be drilled such that the surface location of the well and all points along the intended well bore shall be within the tolerances allowed by R649-3-2, Location and Siting of Vertical Wells and Statewide Spacing for Horizontal Wells, or the appropriate board order.

R649-3-11. Directional Drilling.

1. Except for the tolerances allowed under R649-3-10, no well may be intentionally deviated unless the operator shall first file application and obtain approval from the division. An application for directional drilling may be approved by the division without notice and hearing when the applicant is the owner of all the oil and gas within a radius of 460 feet from all points along the intended well bore, or the applicant has obtained the written consent of the owner to the proposed directional drilling program. An application for directional drilling may be included as part of the initial APD for a proposed well.

2. An application for directional drilling shall include the following information:

2.1. The name and address of the operator.

2.2. The lease name, well number, field name, reservoir name, and county where the proposed well is located.

2.3. A plat or sketch showing the distance from the surface location to section and lease lines, the target location within the intended producing interval, and any point along the intended well bore outside the 460 foot radius for which the consent of the owner has been obtained.

2.4. The reason for the intentional deviation.

2.5. The signature of designated agent or representative of operator.

3. Within 30 days following completion of a directionally drilled well, a complete angular deviation and directional survey of the well obtained by an approved well survey company shall be filed with the division, together with other regularly required reports.

R649-3-12. Drilling Practices For Hydrogen Sulfide Areas And Formations.

1. This rule shall apply to drilling, redrilling, deepening, or plugging back operations in areas where the formations to be penetrated are known to contain or are expected to contain H_2S in excess of 20 ppm and to areas where the presence or absence thereof is unknown.

2. A written contingency plan, providing details of actions to be taken to alert and protect operating personnel and members of the public in the event of an accidental release of H_2S gas shall be submitted to the division as part of the initial APD for a well or as a sundry notice.

3. All proposed drill site locations shall be planned to obtain the maximum safety benefits consistent with the rig configuration, terrain, prevailing winds, etc. The drilling rig shall, where possible, be situated so that prevailing winds blow across the rig in a direction toward the reserve pit and away from escape routes. On-site trailers shall be located to allow reasonably safe distances from both the well and the outlet of the flare line.

4. At least two cleared areas shall be designated as crew briefing or safety areas. Both areas shall be located at least 200 feet from the well, with at least one area located generally upwind from the well.

5. Protective equipment shall be provided by the operator or its drilling contractor for operating personnel and shall include the following:

5.1. An adequate number of positive pressure type self-contained breathing apparatus to allow all personnel normally involved in the drilling operation immediate access to such equipment, with a minimum of one working apparatus available for the immediate use of each rig hand in emergencies.

5.2. Chalk boards or note pads to be used for communication when wearing protective breathing apparatus.

5.3. First aid supplies.

5.4. One resuscitator complete with medical oxygen.

5.5. A litter or stretcher.

5.6. Harnesses and lifelines.

5.7. A telephone, radio, mobile phone, or other communication device that provides emergency two-way communication from a safe area at the well location.

6. Each drill site shall have an H_2S detection and monitoring system that activates audible and visible alarms when the concentration of H_2S reaches the threshold limit of 20 ppm in air. This equipment shall have a rapid response time and be capable of sensing a minimum of ten ppm H_2S in air, with at least three sensing points, located at the shale shaker, on the derrick floor, and in the cellar. Other sensing points shall be located at other critical areas where H_2S might accumulate. Portable H_2S detection equipment capable of sensing an H_2S concentration of 20 ppm shall be available for all working personnel and shall be equipped with an audible warning signal.

7. Equipment to indicate wind direction at all times shall be installed at prominent locations. At least two wind socks or streamers shall be located at separate elevations at the well

location and shall be easily visible from all areas of the location. Windsocks or streamers shall be located in illuminated areas for night operations.

8. When H_2S is encountered during drilling, well marked, highly visible warning signs shall be displayed at the rig and along all access routes to the well location. The signs shall warn of the presence of H_2S and shall prohibit approach to the well location when red flags are displayed. Red flags shall be displayed when H_2S is present in concentrations greater than 20 ppm in air as measured on the equipment required under R649-3-12-6.

9. Unless adequate natural ventilation is present, portable fans or ventilation equipment shall be located in work areas to disperse H_2S when it is encountered.

10. A flare system shall be utilized to safely gather and burn H_2S bearing gas. Flare lines shall be located as far from the operating site as feasible and shall be located in a manner to compensate for wind changes. The outlets of all flare lines shall be located at least 150 feet from the well head unless otherwise approved by the division.

11. Sufficient quantities of additives shall be maintained on location to add to the mud system to scavenge or neutralize H_2S.

R649-3-13. Casing Tests.

In order to determine the integrity of the casing string set in the well, the operator shall, unless otherwise requested by the division, perform a pressure test of the casing to the pressures specified under R649-3-7-4 before drilling out of any casing string, suspending drilling operations, or completing the well.

R649-3-14. Fire Hazards On The Surface.

1. All rubbish or debris that might constitute a fire hazard shall be removed to a distance of a least 100 feet from the well location, tanks, separator, or any structure. All waste oil or gas shall be burned or disposed of in a manner to avert creation of a fire hazard.

2. Any gas other than poisonous gas escaping from the well during drilling operations shall be, so far as practicable, conducted to a safe distance from the well site and burned in a suitable flare.

R649-3-15. Pollution And Surface Damage Control.

The operator shall take all reasonable precautions to avoid polluting lands, streams, reservoirs, natural drainage ways, and underground water. The owner or operator shall carry on all operations and maintain the property at all times in a safe and workmanlike manner having due regard for the preservation and conservation of the property and for the health and safety of employees and people residing in close proximity to those operations. At a minimum, the owner or operator shall:

1.1. Take reasonable steps to prevent and shall remove accumulations of oil or other materials deemed to be fire hazards from the vicinity of well locations, lease tanks and pits.

1.2. Remove from the property or store in an orderly manner, all scrap or other materials not in use.

1.3. Provide secure workmanlike storage for chemical containers, barrels, solvents, hydraulic fluid, and other non-exempt materials.

1.4. Maintain tanks in a workmanlike manner which will preclude leakage and provide for all applicable safety measures, and construct berms of sufficient height and width to contain the quantity of the largest tank at the storage facility. The use of crude or produced water storage tanks without tops is strictly prohibited except during well testing operations.

1.5. Catch leaks and drips, contain spills, and cleanup promptly. Waste reduction and recycling should be practiced in order to help reduce disposal volumes. Produced water, tank bottoms and other miscellaneous waste should be disposed of in a manner which is in compliance with these rules and other state, federal, or local regulations or ordinances. In general, good housekeeping practices should be used.

R649-3-16. Reserve Pits and Other Onsite Pits.

1. Small onsite oil field pits including but not limited to reserve pits, emergency pits, workover and completion pits, storage pits, pipeline drip pits, and sumps shall be located and constructed in such a manner as to contain fluids and not cause pollution of waters and soils. They shall be located and constructed according to the Division guidelines for onsite pits.

2. Reserve pit location and construction requirements including liner requirements will be discussed at the predrill site evaluation. Special stipulations concerning the reserve pit will be included as part of the Division's approval to drill.

3. Following drilling and completion of the well the reserve pit shall be closed within one year, unless permission is granted by the Division for a longer period. Pit contents shall meet the Division's Cleanup Levels (guidance document for numeric clean-up levels) or background levels prior to burial. The contents may require treatment to reduce mobility and/or toxicity in order to meet cleanup levels. The alternative to meeting cleanup levels would be transporting of material to an appropriate disposal facility.

R649-3-17. Inspection.

Inspection of wells shall be performed by the division to determine operator compliance with the rules and orders of the board. The inspection shall not interfere with the mechanical operation of facilities or equipment used in drilling and production operations. Inspections of operations involving a safety hazard shall not be conducted, nor shall an inspection be conducted that may cause a safety hazard.

R649-3-18. On-site Predrill Evaluation.

1. An on-site predrill evaluation of drilling operations located on state or private land shall be scheduled and conducted by the division prior to approval of an APD and no later than 30 days after receipt by the division of a complete APD. An on-site predrill evaluation may be performed by the division prior to submittal of a complete APD at the written request of the operator. The division, the operator, and other persons associated with the surface management or construction of the well site shall attend the predrill evaluation. When appropriate, the operator's surveyor and archaeologist may also participate in the predrill evaluation. When the surface of the land involved is privately owned, the operator shall include in the APD the name, address, and telephone number of the private surface owner as shown on the real property records of the

county where the well is located. The surface owner shall be invited by the division to attend the predrill evaluation. The surface owner's inability to attend the predrill evaluation shall not delay the scheduled evaluation.

2. Special stipulations concerning surface use or justifications for well spacing exceptions may be addressed and developed at the predrill evaluations. Special stipulations shall be incorporated as conditions of the approved APD, together with any additional conditions determined by the division to be necessary following a review of the complete application.

R649-3-19. Well Testing.

1. Each operator shall conduct a stabilized production test of at least 24 hours duration not later than 15 days following the completion or recompletion of any well for the production of oil or gas.

The results of the test shall be reported in writing to the division within 15 days after completion of the test. Additional tests shall be taken as requested by the division.

2. The division may request subsurface pressure measurements on a sufficient number of wells in any pool to provide adequate data to determine reservoir characteristics.

3. Upon written request, the division may waive or extend the time for conducting any test.

4. A gas-oil ratio "GOR" test shall be conducted not later than 15 days following the completion or recompletion of each well in a pool which contains both oil and gas. The average daily oil production, the average daily gas production and the average GOR shall be recorded. The results of the GOR test shall be reported in writing to the division within 15 days after completion of the test. A GOR test of at least 24 hours duration shall satisfy the requirements of R649-3-19-1.

5. When the results of a multipoint test or other approved test for the determination of gas well potential have not been submitted to the division within 30 days after completion or recompletion of any producible gas well, the division may order that this test be made. All data pertinent to the test shall be submitted to the division in legible, written form within 15 days after completion of the test. The performance of a multipoint or other approved test shall satisfy the requirements of R649-3-19-1.

6. All tests of any producible gas well will be taken in accordance with the Manual of Back-Pressure Testing of Gas Wells published by the Interstate Oil Compact Commission, with necessary modifications as approved by the division.

R649-3-20. Gas Flaring Or Venting.

1. Produced gas from an oil well, also known as associated gas or casinghead gas, may be flared or vented only in the following amounts:

1.1. Up to 1,800 MCF of oil well gas may be vented or flared from an individual well on a monthly basis at any time without approval.

1.2. During the period of time allowed for conducting the stabilized production test or other approved test as required by R649-3-19, the operator may vent or flare all produced oil well gas as needed for conducting the test. The operator shall not vent or flare gas which is not necessary for conducting the test or beyond the time allowed for conducting the test.

1.3. During the first calendar month immediately following the time allowed for conducting the initial stabilized production test as required by R649-3-19.1, the operator may vent or flare up to 3,000 MCF of oil well gas without approval.

1.4. Unavoidable or short-term oil well gas venting or flaring may occur without approval in accordance with R649-3-20.4, 4.1, 4.2, and 4.3.

2. Produced gas from a gas well may be vented or flared only in the following amounts:

2.1. During the period of time allowed for conducting the stabilized production test, the multipoint test, or other approved test as required by R649-3-19, the operator may vent or flare all produced gas well gas as needed for conducting the test. The operator shall not vent or flare gas which is not necessary for conducting the tests or beyond the time allowed for conducting the tests.

2.2. Unavoidable or short-term gas well gas venting or flaring may occur without approval in accordance with R649-3-20.4, 4.1, 4.2, and 4.3.

3. If an operator desires to produce a well for the purpose of testing and evaluation beyond the time allowed by R649-3-19 and vent or flare gas in excess of the aforementioned limits of gas venting or flaring, the operator shall make written request for administrative action by the division to allow gas venting or flaring during such testing and evaluation. The operator shall provide any information pertinent to a determination of whether marketing or otherwise conserving the produced gas is economically feasible. Upon such request and based on the justification information presented, the division may authorize gas venting or flaring at unrestricted rates for up to 30 days of testing or no more than 50 MMCF of gas vented or flared, whichever is less.

4. Once a well is completed for production and gas is being transported or marketed, the operator is allowed unavoidable or short-term gas venting or flaring without approval only in the following cases:

4.1. Gas may be vented or released from oil storage tanks or other low pressure oil production vessels unless the division determines that the recovery of such vapors is warranted.

4.2. Gas may be vented or flared from a well during periods of line failures, equipment malfunctions, blowouts, fires, or other emergencies if shutting in or restricting production from the well would cause waste or create adverse impact on the well or producing reservoir. The operator shall provide immediate notification to the division in all such cases in accordance with R649-3-32, Reporting of Undesirable Events. Upon notification, the division shall determine if gas venting or flaring is justified and specify conditions of approval if necessary.

4.3. Gas may be vented or flared from a well during periods of well purging or evaluation tests not exceeding a period of 24 hours or a maximum of 144 hours per month. The operator shall provide subsequent written notification to the division in all such cases.

5. If an operator wishes to flare or vent a greater amount of produced gas than allowed by this rule, the operator must submit a Request for Agency Action to the board to be considered as a formal board docket item. The request should include the following items:

5.1. A statement justifying the need to vent or flare more than the allowable amount.

5.2. A description of production test results.

5.3. A chemical analysis of the produced gas.

5.4. The estimated oil and gas reserves.

5.5. A description of the reinjection potential or other conservation oriented alternative for disposition of the produced gas.

5.6. A description of the amount of gas used in lease operations.

5.7. An economic evaluation supporting the operator's determination that conservation of the gas is not economically viable. The evaluation should utilize any engineering or geologic data available and should consider total well production, not just gas production, in presenting the profitability and costs for beneficial use of the gas.

5.8. Any other information pertinent to a determination of whether marketing or otherwise conserving the produced gas is economically feasible.

6. Upon review of the request for approval to vent or flare gas from a well, the board may elect to:

6.1. Allow the requested venting or flaring of gas.

6.2. Restrict production until the gas is marketed or otherwise beneficially utilized.

6.3. Take any other action the board deems appropriate in the circumstances.

7. When gas venting or flaring from a well has not been approved by the division or the magnitude and duration of venting or flaring exceeds the amounts specified in these rules or any division or board approval, then the board may issue a formal order to alleviate the noncompliance and/or require the operator to appear before the board to provide justification of such venting or flaring. The division shall notify the appropriate governmental taxing and royalty agencies of any unapproved venting or flaring and of any subsequent board action.

8. No extraction plant processing gas in Utah shall flare or vent such gas unless such venting or flaring is made necessary by mechanical difficulty of a very limited temporary nature or unless the gas vented or flared is of no commercial value. In the event of a more prolonged mechanical difficulty or in the event of plant shut-downs or curtailment because of scheduled or nonscheduled maintenance or testing operations or other reasons, or in the event a plant is unable to accept, process, and market all of the casinghead gas produced by wells connected to its system, the plant operator shall notify the division as soon as possible of the full details of such shut-down or curtailment, following which the division shall take such action as is necessary.

R649-3-21. Well Completion And Filing Of Well Logs.

1. For the purposes of this rule only, a well shall be determined to be completed when the well has been adequately worked to be capable of producing oil or gas or when well testing as required by the division is concluded.

2. Within 30 days after the completion of any well drilled or redrilled for the production of oil or gas, Form 8, Well Completion or Recompletion Report and Log, shall be filed with the division, together with a copy of the electric and radioactivity logs, if run.

3. In addition, one copy of all drillstem test reports, formation water analyses, porosity, permeability or fluid saturation determinations, core analyses and lithologic logs or sample descriptions if compiled, shall be filed with the division.

4. As prescribed under R649-2-12, Test and Surveys, the directional, deviation and/or measurement-while-drilling (MWD) survey for a horizontal well shall be filed within 30 days of being run. Such directional, deviation and/or MWD survey specifically related to well location or well bore path shall not be held confidential. Other MWD survey data which presents well log, or other geological, geophysical, or engineering information may be held confidential as provided in R649-2-11, Confidentiality of Well Log Information.

R649-3-22. Completion Into Two Or More Pools.

1. The completion of a single well into more than one pool may be permitted by submitting an application to the division and securing its approval. The application shall be submitted on Form 9, Sundry Notice and Report and shall be accompanied by an exhibit showing the location of all wells on contiguous oil and gas leases or drilling units overlying the pool. The application shall set forth all material facts involved and the manner and method of completion proposed.

2. If oil or gas is to be produced from two or more pools open to each other through the same string of casing so that commingling will take place, the application must also be accompanied by a description of the method used to account for and to allocate production from each pool so commingled.

3. The application shall include an affidavit showing that the operator has provided a copy of the application to the owners of all contiguous oil and gas leases or drilling units overlying the pool. If none of these owners file a written objection to the application within 15 days after the date the application is filed with the division, the application may be considered and approved by the division without a hearing. If a written objection is filed that cannot be resolved administratively, the application may be approved only after notice and hearing by the board.

R649-3-23. Well Workover and Recompletion.

1. Requests for approval of a notice of intention to perform a workover or recompletion shall be filed by an operator with the division on Form 9, Sundry Notices and Reports on Wells, or if the operation includes substantial redrilling, deepening, or plugging back of an existing well, on Form 3, Application for Permit to Drill, Deepen or Plug Back.

2. The division shall review the proposed workover or recompletion for conformance with the Oil and Gas Conservation General Rules and advise the operator of its decision and any necessary conditions of approval.

3. Recompletions shall be conducted in a manner to protect the original completion interval(s) and any other known productive intervals.

4. The same tests and reports are required for any well recompletion as are required following an original well completion.

5. The applicant shall file a subsequent report of workover on Form 9, Sundry Notices and Reports, or a subsequent report of recompletion on Form 8, Well Completion or Recompletion

Report and Log, within 30 days after completing the workover or recompletion operations.

6. For the purpose of qualifying for a tax credit under Utah Code Ann. Section 59-5-102(3), the operator on his behalf and on behalf of each working interest owner must file a request with the division on Form 15, Designation of Workover or Recompletion. The request must be filed within 90 days after completing the workover or recompletion operations.

7. A workover which may qualify under Utah Code Ann. Section 59-5-102(3) shall be downhole operations conducted to maintain, restore or increase the producibility or serviceability of a well in the geologic interval(s) that the well is currently completed in, but shall not include:

7.1. Routine maintenance operations such as pump changes, artificial lift equipment or tubing repair, or other operations which do not involve changes to the wellbore configuration or the geologic interval(s) that it penetrates and which do not stimulate production beyond that which would be anticipated as the result of routine maintenance.

7.2. Operations to convert any well for use as a disposal well or other use not associated with enhancing the recovery of hydrocarbons. Operations to convert a well to a Class II injection well for enhanced recovery purposes may qualify if the secondary or enhanced recovery project has received the necessary board approval.

8. A recompletion which may qualify under Utah Code Ann. Section 59-5-102(3) shall be downhole operations conducted to reestablish producibility or serviceability of a well in any geologic interval(s).

9. The division shall review the request for designation of a workover or recompletion and advise the operator and the State Tax Commission of its decision to approve or deny the operations for the purposes of Utah Code Ann. Section 59-5-102(3).

10. The division is responsible for approval of workover and recompletion operations which qualify for the tax credit. If the operator disagrees with the decision of the division, the decision may be appealed to the board. Appeals of all other workover and recompletion tax credit decisions should be made to the State Tax Commission.

R649-3-24. Plugging And Abandonment Of Wells.

1. Before operations are commenced to plug and abandon any well the owner or operator shall submit a notice of intent to plug and abandon to the division for its approval. The notice shall be submitted on Form DOGM-5, Sundry Notice and Report on Wells. A legible copy of a similar report and form filed with the appropriate federal agency may be used in lieu of the forms prescribed by the board. In cases of emergency the operator may obtain verbal or telegraphic approval to plug and abandon. Within five days after receiving verbal or telegraphic approval, the operator shall submit a written notice of intent to plug and abandon on Form 9.

2. Both verbal and written notice of intent to plug and abandon a well shall contain the following information.

2.1. The location of the well described by section, township, range, and county.

2.2. The status of the well, whether drilling, producing, injecting or inactive.

2.3. A description of the well bore configuration indicating depth, casing strings, cement tops if known, and hole size.

2.4. The tops of known geologic markers or formations.

2.5. The plugging program approved by the appropriate federal agency if the well is located on federal or Indian land.

2.6. An indication of when plugging operations will commence.

3. A dry or abandoned well must be plugged so that oil, gas, water, or other substance will not migrate through the well bore from one formation to another. Unless a different method and procedure is approved by the division, the method and procedure for plugging the well shall be as follows:

3.1. The bottom of the hole shall be filled to, or a bridge shall be placed at, the top of each producing formation open to the well bore, and a cement plug not less than 100 feet in length shall be placed immediately above each producing formation open to the well bore.

3.2. A solid cement plug shall be placed from 50 feet below a fresh water zone to 50 feet above the fresh water zone, or a 100 foot cement plug shall be centered across the base of the fresh water zone and a 100 foot plug shall be centered across the top of the fresh water zone.

3.3. At least ten sacks of cement shall be placed at the surface in a manner completely plugging the entire hole. If more than one string of casing remains at the surface, all annuli shall be so cemented.

3.4. The interval between plugs shall be filled with noncorrosive fluid of adequate density to prevent migration of formation water into or through the well bore.

3.5. The hole shall be plugged up to the base of the surface string with noncorrosive fluid of adequate density to prevent migration of formation water into or through the well bore, at which point a plug of not less than 50 feet of cement shall be placed.

3.6. Any perforated interval shall be plugged with cement and any open hole porosity zone shall be adequately isolated to prevent migration of fluids.

3.7. A cement plug not less than 100 feet in length shall be centered across the casing stub if any casing is cut and pulled, a second plug of the same length shall be centered across the casing shoe of the next larger casing.

4. An alternative method of plugging required under a federal or Indian lease, will be accepted by the division.

5. Within 30 days after the plugging of any well has been accomplished, the owner or operator shall file a subsequent report of plugging with the division. The report shall give a detailed account of the following items:

5.1. The manner in which the plugging work was carried out, including the nature and quantities of materials used in plugging and the location, nature, and extent by depths, of the plugs.

5.2. Records of any tests or measurements made.

5.3. The amount, size, and location, by depths of any casing left in the well.

5.4. A statement of the volume of mud fluid used.

5.5. A complete report of the method used and the results obtained, if an attempt was made to part any casing.

6. Upon application to and approval by the division, and following assumption of liability for the well by the surface

owner, a well or other exploratory hole that may safely be used as a fresh water well need not be filled above the required sealing plugs set below the fresh water formation. The owner of the surface of the land affected may assume liability for any well capable of conversion to a water well by sending a letter assuming such liability to the division and by filing an application with and obtaining approval for appropriation of underground water from the Division of Water Rights.

7. Unless otherwise approved by the division, all abandoned wells shall be marked with a permanent monument showing the well number, location, and name of the lease. The monument shall consist of a portion of pipe not less than four inches in diameter and not less than ten feet in length, of which four feet shall be above the ground level and the remainder shall be securely embedded in cement. The top of the pipe must be permanently sealed.

8. If any casing is to be pulled after a well has been abandoned, a notice of intent to pull casing must be filed with the division and its approval obtained before the work is commenced. The notice shall include full details of the contemplated work. If a log of the well has not already been filed with the division, the notice shall be accompanied by a copy of the log showing all casing seats as well as all water strata and oil and gas shows. Where the well has been abandoned and liability has been terminated with respect to the bond previously furnished under R649-3-1, a $10,000 plugging bond shall be filed with the division by the applicant.

R649-3-25. Underground Disposal Of Drilling Fluids.

1. Operators shall be permitted to inject and dispose of reserve pit drilling fluids downhole in a well upon submitting an application for such operations to the division and obtaining its approval. Injection of reserve pit fluids shall be considered by the division on a case-by-case basis.

2. Each proposed injection procedure will be reviewed by the division for conformance to the requirements and standards for permitting disposal wells under R649-5-2 to assure protection of fresh-water resources.

3. The subsurface disposal interval shall be verified by temperature log, or suitable alternative, during the disposal operation.

4. The division shall designate other conditions for disposal, as necessary, in order to ensure safe, efficient fluid disposal.

R649-3-26. Seismic Exploration.

1. Form 1, Application for Permit to Conduct Seismic Exploration shall be submitted to the division by the seismic contractor at least seven days prior to commencing any type of seismic exploration operations. In cases of emergency, approval may be obtained either verbally or by telegraphic communication. Changes of plans or line locations may be implemented in an emergency situation without division approval. Within five days after the change is performed, the seismic contractor shall submit written notice of the change to the division.

1.1 The permit may be revoked at any time by the division for failure to comply with the rules and orders of the board.

1.2. Any request to deviate from the general plugging and operations procedures of these rules shall be included on the permit application.

1.3. The name, address, and telephone number of the seismic contractor's local contact shall be submitted to the division as soon as determined if not available when the permit application is submitted.

1.4. After review of the application for a seismic permit, the division may require written permission of the owner of the surface of the affected land if it is determined that the seismic operation may significantly impact any building, pipeline, water well, flowing spring, or other cultural or natural feature in the area.

1.5. The permit will be in effect for six months from the date of approval. The permit may be extended upon application to and approval by the division.

2. Bonding shall not be required for seismic exploration requiring the drilling of shot holes.

3. Seismic contractors shall give the division at least 24 hours advance notice of the plugging of seismic holes. The notice shall include the date and time the plugging activities are expected to commence, the name and address of the seismic contractor responsible for the holes, and, if different, the name and address of the hole plugging company.

4. Unless the seismic contractor can prove to the satisfaction of the division that another method will provide adequate protection to ground water resources and other man-made or natural features and will provide long-term land stability, the following procedures shall be required for the conduct of seismic operations and hole plugging:

4.1. Seismic contractors shall take reasonable precautions to avoid conducting shot hole operations closer than 1,320 feet to any building, pipeline, water well, flowing spring, or other cultural/natural feature, e.g., a historical monument, marker, or structure, which may be adversely affected by the seismic operations.

4.2. When nonartesian water is encountered while drilling seismic shot holes, the holes shall be filled from the bottom up with a high grade bentonite/water slurry mixture. The slurry shall have a density that is at least four percent greater than the density of fresh water and shall have a marsh funnel viscosity of at least 60 seconds per quart. The density and viscosity of the slurry are to be measured prior to adding cuttings. Cuttings not added to the slurry are to be disposed of in accordance with R649-3-26-4.6. Upon approval by the division, any other suitable plugging material commonly used in the industry may be substituted for the bentonite/water slurry as long as the physical characteristics of the substitute plugging material are at least comparable to those of the bentonite/water slurry. The hole shall be filled with the substitute plugging material from the bottom up to a depth of three feet below ground level. A nonmetallic permaplug shall be set at a depth of three feet. The remaining hole shall be filled and tamped to the surface with cuttings and native soil. The permaplug shall be imprinted with an approved identification number or mark.

4.3. When drilling with air only, and in completely dry holes, plugging may be accomplished by returning the cuttings to the holes, tamping the returned cuttings to the depth of three feet below ground level, and setting the permaplug topped with more cuttings and soil. A small mound shall be left over the

hole for settling allowance.

4.4. If artesian flow, water flowing at the surface, is encountered in the drilling of any seismic hole, cement shall be used to seal off the water flow to prevent cross-flow, erosion, or contamination of fresh water supplies. Unless severe weather conditions prevent access, the holes shall be cemented immediately. Approval may be granted to seismic operator to plug a flowing hole in another manner, if it is proved to this division that the alternate method will provide adequate protection to ground water resources and provide long term land stability. The owner of the surface of the land affected may assume liability for a seismic hole capable of conversion to a water well by sending a letter assuming such liability to the division and by filing an application with and obtaining approval for appropriation of underground water from the Division of Water Rights.

4.5. Shotholes shall be properly plugged and abandoned as soon as practical after the shot has been fired. No shothole shall be left unplugged for more than 30 days without approval of the division. Until properly plugged, shotholes shall be covered with a tin hat or other similar cover. The hats shall be imprinted with the seismic contractor's name or initials.

4.6. Any slurry, drilling fluids, or cuttings which are deposited on the surface around the seismic hole shall be raked or otherwise spread out to a height of not more than one inch above the surface, so that the growth of the natural grasses or foliage will not be impaired.

4.7. Restoration plans required by the Mined Land Reclamation Act, Chapter 8 of Title 40, or by any other surface management agency will be accepted by the division. The surface area around each seismic shothole shall be reclaimed and reseeded to its original condition insofar as such restoration is practical and is required by the surface management agency. All flagging, stakes, cables, cement, or mud sacks shall be removed from the drill site and disposed of in an acceptable manner.

5. Upon application to the division, approval may be obtained for preplugging of shotholes using coarse bentonite material or a suitable alternative used in the industry. Preplugging of holes in this manner shall be performed according to the following procedures:

5.1. A sales receipt indicating proof of purchase of an adequate amount of coarse bentonite to properly plug all shotholes shall be submitted to the division upon request.

5.2. For shotholes drilled with air which are completely dry, the seismic contractor shall have the option of preplugging with the coarse bentonite material or of using an alternate plugging material under R649-3-26-4.3.

5.3. For conventionally drilled, wet holes, enough approved material shall be used to cover the initial water level, i.e., the depth of the initial water level in the hole prior to adding coarse bentonite material shall be equal to the final plug depth. An additional ten feet of approved material shall be placed above this depth and hole cuttings shall be used to fill the remainder of the hole to a depth of three feet below ground level. A nonmetallic plug imprinted with an approved identification number or mark shall be installed at this depth. The remaining three feet of hole shall be filled and tamped to the surface with cuttings and native soil. The remaining cuttings shall be raked or spread to a height not to exceed one inch above ground level.

5.4. When using heliportable drills and insufficient cuttings are available, the hole shall be preplugged with bentonite plugging material or an approved alternate material to a depth of three feet below ground level. Installation of a nonmetallic plug and filling the remainder of the hole shall be performed as required by R649-3-26-5.3.

5.5. The coarse bentonite plugging material shall have the following specifications - chemically unaltered sodium bentonite, coarse ground, three quarter inch maximum size, not more than 19% moisture content and not more than 15% inert solids by volume.

6. Form 2, Seismic Exploration Completion Report shall be submitted to the Division within 60 days after completion of each seismic exploration project. The report shall include:

Certification by the seismic contractor that all shot holes have been plugged as prescribed by the division.

R649-3-27. Multiple Mineral Development.

1. Drilling operations conducted in areas designated by the board for multiple mineral development shall comply with all rules or orders of the board for drilling, casing, cementing, and plugging except as the general rules or orders may be modified by this rule.

2. It is the policy of the division to promote the development of all mineral resources on land under its jurisdiction. Consistent with that policy, operators engaged in oil and gas operations on lands on which operators are exploring for and developing mineral resources other than oil and gas may enter into a cooperative agreement with these other operators with respect to multiple mineral development. The agreement shall define:

2.1. The extent and limits of liability when one operator, either intentionally or unintentionally, interferes with or damages the deposits of another.

2.2. The coordination of access to and development of the area.

2.3. Mitigation of surface impact including but not limited to issues pertaining to relocation of natural gas pipeline gathering and distribution systems and other surface facilities occasioned by placement of a spent shale pile; phased or coordinated surface occupancy so as to allow each operator to enjoy his respective mineral estate with the least disruption of operations and damage to the oil and gas deposits, either directly or indirectly, through waste; and limitation of oil and gas operations in areas of concentrated surface oil shale facilities.

2.4. Mitigation of subsurface impact including but not limited to issues pertaining to the interface in the underground environment of oil shale mining operations with other mineral operations.

2.5. The extent of exchange of geological, engineering, and production data.

2.6. Other cooperative efforts consistent with multiple mineral development under the rules and orders of the board pertaining to oil and gas operations, oil shale operations, and mined land reclamation.

3. The division, together with the Division of State Lands

and Forestry, where applicable, shall be signatory to the agreement.

4. In the event the operators cannot agree on cooperative development of their respective mineral deposits, or having once entered into a cooperative agreement subsequently disagree on the application of the terms and provisions thereof, any operator whose oil and gas or mining operation or deposit may be adversely affected or damaged by the operations of another operator may apply to the board for, or the board may on its own motion enter an order, after notice and hearing, delineating the respective rights and obligations of all operators with respect to development of all minerals concerned.

5. After notice and hearing the board may modify its order to more effectively carry out the policies of multiple mineral development.

R649-3-28. Designated Potash Areas.

1. In any area designated as a potash area, either by the board, the Division of State Lands and Forestry or an appropriate federal agency, all wells shall be drilled, cased, cemented, and plugged in accordance with the rules and orders of the board. The following minimum requirements and definitions shall also apply to the drilling, logging, casing, and plugging operations within the Salt Section to protect against migration of oil, gas, or water into or within any formation or zone containing potash. As used in this rule, Salt Section shall mean the Paradox Salt Section of Pennsylvanian Age.

2. Any drilling media used through the Salt Section shall be such that sodium chloride is not soluble in the media at normal temperatures.

3. Gamma ray-neutron, gamma ray-sonic or other appropriate logs shall be run promptly through the Salt Section. One field copy of the log through the Salt Section shall be submitted to the division within ten days, or upon the request of the division, whichever is the earlier.

4. A directional survey shall be run from a point at least 20 feet below the Salt Section to the surface. The survey shall be filed with the division prior to completion or plugging and abandonment of the well.

5. In addition to the requirements of the R649-3-8, any casing set into or through the Salt Section shall be cemented solidly through the Salt Section above the casing shoe.

6. Any cement used in setting casing or in plugging which comes in contact with the Salt Section shall be of such chemical composition as to avoid dissolution of the Salt Section and to provide weight, strength, and physical properties sufficient to protect uphole formations and prevent blowouts or uncontrolled flows.

7. If a well is dry, cement plugs at least 200 feet in length shall be placed across the top and the base of the Salt Section, across any oil, gas or water show, and across any potash zone. Plugs shall not be required inside a properly cemented casing string. The division shall approve the location of the plugs after examining the appropriate logs, drilling and testing records for the well. No well shall be temporarily abandoned with open hole in the Salt Section.

8. The division may inspect the drilling operations at all times, including any mining operations that may affect any drilling or producing well bores. A potash owner, if contributing by agreement to the logging and directional survey costs of a well, may inspect the well for compliance with this rule.

9. Before commencing drilling operations for oil or gas on any land within designated potash area, the operator shall furnish by registered mail, a copy of the APD, together with the plat or map required under R649-3-4, to all potash owners and lessees whose interests are within a radius of 2,640 feet of the proposed well.

10. After proper notice and hearing, the board may modify this rule for a particular well or area by requiring that greater or lesser precautions be taken to prevent the escape of oil, gas, or water from one stratum into another. The board may also expand or contract from the designated potash areas.

R649-3-29. Workable Coal Beds.

1. Prior to commencing drilling operations for oil and gas on any lands where there are mine workings, the operator shall furnish a copy of the APD, a plat or map as required under R649-3-4, and a designation of the proposed angle and direction of the well, if the well is to be deviated substantially from a vertical course, to all coal owners and lessees whose interests are within a radius of 5,280 feet of the proposed well.

2. A well penetrating one or more workable coal beds or mine workings shall be drilled to a depth and shall be of a size, to permit the placing of casing in the hole at the points and in the manner necessary to exclude all oil, gas or gas pressure from the coal bed, other than oil, gas or gas pressure originating in the coal bed.

3. Unless otherwise authorized by the division, the casing run through a coal bed shall be seated at least 50 feet into the closest impervious formation below the coal bed. The casing shall be cemented solidly through the coal bed to a height at least 50 feet into the closest impervious formation above the coal bed.

4. A directional survey or a cement bond log shall be performed and furnished to the division upon written request by the division.

5. Upon penetrating a coal bed the operator shall notify the division, in writing, before completing or plugging and abandoning the well.

R649-3-30. Underground Mining Operations.

1. Prior to commencing drilling operations for oil and gas on any land where there are known or suspected underground mining operations, solution mining operations or surface mining operations, including solar evaporation ponds, the operator shall include in the APD or in a separate cover letter, any information known to the operator concerning the name and address of the owner or operator of the mining workings.

2. The division may, with the concurrence of the operator, change the surface location of the proposed well if there appears to be any possibility of interference between the proposed well bore and the mine workings.

R649-3-31. Designated Oil Shale Areas.

1. Lands may be designated as an oil shale area by the board, either upon its own motion, or upon the petition of an interested person following notice and hearing.

2. As used in this rule, oil shale section means the sequence of strata containing oil shale beds, including any interbedded strata not containing oil shale, consisting of the Parachute Creek Member of the Green River Formation of Tertiary Age, defined as the stratigraphic equivalent of the interval between 1,428 feet and 2,755 feet below the Kelly Bushing on the induction-electrical log of the Ute Trail No. 10 well drilled by Dekalb Agricultural Association, Inc. and located in the NE 1/4 of Section 34, Township 9 South, Range 21 East, S.L.M., Uintah County, Utah.

The Mahogany Zone is defined as the stratigraphic equivalent of the interval between 2,230 feet and 2,360 feet below the Kelly Bushing on the induction-electrical log of the Ute Trail No. 10 well drilled by Dekalb Agricultural Association, Inc., and located in the NE 1/4 of Section 34, Township 9 South, Range 21 East, S.L.M., Uintah County, Utah.

3. For purposes of identifying the oil shale intervals, an appropriate electrical log shall be run through the oil shale section. One field copy of the log through the oil shale section shall be made available to the division pursuant to R649-3-23 or upon written request by the division.

4. On all wells which are intentionally deviated from the vertical within the oil shale section, pursuant to the provisions of R649-3-10 and R649-3-11, a directional survey shall be run from a point at least 20 feet below the oil shale section to the surface and shall thereafter be filed with the division within 20 days after reaching total depth.

5. Any oil shale lessee or operator whose oil shale mine workings reach a distance of 2,640 feet from a producing well or any oil and gas lessee or operator whose producing well is approached by oil shale mine workings within a distance of 2,640 feet shall request agency action with the board. The board may promulgate an order after notice and hearing with respect to the running of a directional survey through the oil shale section, the cost and potential resource loss liability and responsibility as to the oil and gas operator and the oil shale lessee or operator and any other issues regarding multiple mineral development.

6. The directional survey shall be the confidential property of the parties paying for the survey and shall be kept confidential until released by said parties or the division.

7. In addition to the requirements pertaining to the cementing of casing contained in the R649-3-8, any casing set into or through the oil shale section shall be cemented over the entire oil shale section.

8. If a well is dry, junked or abandoned, a cement plug shall be placed across that portion of the oil shale section extending 200 feet above and 200 feet below the longitudinal center of the Mahogany Zone. The cement plug shall not be required inside a casing cemented in accordance with R649-3-31-7. When the casing is cemented, cement plugs 200 feet in length shall be centered across the top and across the base of the Parachute Creek Member of the Green River Formation.

9. In the event the casing is not cemented in accordance with R649-3-31-7, the division shall approve the method and procedure to prevent the migration of oil, gas, and other substances through the wellbore from one formation to another.

10. The division shall approve the adequacy and location of the cement plugs after examining the appropriate logs and drilling and testing records for the well, to ensure that the oil shale section is adequately protected.

11. Upon written request of the owner or operator under R649-8-6, the division shall keep all well logs confidential. The division may inspect the drilling operations at all times, including any mining operations that may affect drilling or producing well bores.

12. Before commencing drilling operations for oil or gas on any land within a designated oil shale area, the operator shall furnish a copy of the APD, together with a plat or map as directed under R649-3-4, to all oil shale owners or their lessees whose interests are within a radius of 2,640 feet of the proposed well. A notice of intention to plug and abandon any well in the oil shale area, as required under R649-3-24-1, shall be furnished to the owners or their lessees prior to commencement of plugging operations.

13. The operator shall use generally accepted techniques for vertical or directional drilling as defined under R649-3-10 and R649-3-11 to maintain the well bore within an intact core of a mine pillar. Within 20 days of reaching the total depth or before completion of the well, whichever is the earlier, a directional survey shall be run as prescribed by this rule.

R649-3-32. Reporting of Undesirable Events.

1. The division shall be notified of all fires, leaks, breaks, spills, blowouts, and other undesirable events occurring at any oil or gas drilling, producing, or transportation facility, or at any injection or disposal facility.

2. Immediate notification shall be required for all major undesirable events as outlined in R649-3-32-5. Immediate notification shall mean a verbal report submitted to the division as soon as practical but within a maximum of 24 hours after discovery of an undesirable event. A complete written report of the incident shall also be submitted to the division within five days following the conclusion of an undesirable event. The requirements for written reports are specified in R649-3-32-4.

3. Subsequent notification shall be required for all minor undesirable events as outlined in R649-3-32-6. Subsequent notification shall mean a complete written report of the incident submitted to the division within five days following the conclusion of an undesirable event. The requirements for written reports are specified in R649-3-32-4.

4. Complete written reports of undesirable events may be submitted on Form 9, Sundry Notice and Report on Wells. The report shall include:

4.1. The date and time of occurrence and, if immediate notification was required, the date and time the occurrence was reported to the Division.

4.2. The location where the incident occurred described by section, township, range, and county.

4.3. The specific nature and cause of the incident.

4.4. A description of the resultant damage.

4.5. The action taken, the length of time required for control or containment of the incident, and the length of time required for subsequent cleanup.

4.6. An estimate of the volumes discharged and the volumes not recovered.

4.7. The cause of death if any fatal injuries occurred.

5. Major undesirable events include the following:

5.1. Leaks, breaks or spills of oil, salt water or oil field wastes which result in the discharge of more than 100 barrels of liquid, which are not fully contained on location by a wall, berm, or dike.

5.2. Equipment failures or other accidents which result in the flaring, venting, or wasting of more than 500 Mcf of gas.

5.3. Any fire which consumes the volumes of liquid or gas specified in R649-3-32-5.1 and R649-3-32-5.2.

5.4. Any spill, venting, or fire, regardless of the volume involved, which occurs in a sensitive area stipulated on the approval notice of the initial APD for a well, e.g., parks, recreation sites, wildlife refuges, lakes, reservoirs, streams, urban or suburban areas.

5.5. Each accident which involves a fatal injury.

5.6. Each blowout, loss of control of a well.

6. Minor undesirable events include the following:

6.1. Leaks, breaks or spills or oil, salt water, or oil field wastes which result in the discharge of more than ten barrels of liquid and are not considered major events in R649-3-32-5.

6.2 Equipment failures or other accidents which result in the flaring, venting or wasting of more than 50 Mcf of gas and are not considered major events in R649-3-32-5.

6.3. Any fire which consumes the volumes of liquid or specified in R649-3-32-6.1 and R649-3-32-6.2.

6.4. Each accident involving a major or life-threatening injury.

R649-3-33. Drilling Procedures in the Great Salt Lake.

1. For all drilling activities proposed within the Great Salt Lake, the APD required by R649-3-4 shall be filed at least 30 days prior to the date on which the operator intends to commence operations. As part of the APD, the operator shall include:

1.1. The name of the drilling contractor and the number and type of rig to be used.

1.2. An illustration of the boundaries of all state or federal parks, wildlife refuges, or waterfowl management areas within one mile of the proposed well location.

1.3. An illustration of the locations of all evaporation pits, producing wells, structures, buildings, and platforms within one mile of the proposed well location.

1.4. An oil spill emergency contingency plan.

2. Unless permitted by the board after notice and hearing, no well shall be drilled which has a surface location:

2.1. Within 1,320 feet from an evaporation pit without the consent of the operator of such pit.

2.2. Within one mile from the boundary of a state or federal park, wildlife refuge, or waterfowl management area without the consent of the appropriate state or federal regulatory agency.

2.3. Within three miles of Gunnison Island during the Pelican nesting season (March 15 through September 30) or within one mile from said island at any other time.

2.4. Within any area south of the Salt Lake Base Meridian Line.

2.5. Within any area north of Township 10 North.

2.6. Within one mile inside of what would be the water's edge if the water level of the Great Salt Lake were at the elevation of 4,193.3 feet above sea level.

3. Well casing and cementing shall be subject to the following special requirements for the purpose of this rule, the several casing strings in order of normal installation are drive or structural casing, conductor casing, surface casing, intermediate casing, and production casing. All depths refer to true vertical depth:

3.1. The drive or structural casing shall be set by drilling, driving or jetting to a minimum depth of 50 feet below the floor of the lake bed or to such greater depth required to support unconsolidated deposits and to provide hole stability for initial drilling operations. If drilled in, the drilling fluid shall be a type that will not pollute the lake; in addition, a quantity of cement sufficient to fill the annular space back to the lake floor with returns circulated, must be used.

3.2. The conductor casing shall be set at a minimum depth of 200 feet below the floor of the lake, and shall be cemented with a quantity sufficient to fill the annular space back to the lake surface with returns circulated.

3.3. The surface casing shall be set at a minimum depth of 500 feet if the proposed depth of the well is less than 7,000 feet; or 1,000 feet if the proposed depth is over 7,000 feet but less than 11,000 feet; or 1,500 feet if the depth is 11,000 feet. The casing shall be cemented with a quantity sufficient to fill the annular space back to the lake surface with returns circulated, and the bottom of the casing shall be in competent rock.

3.4. The intermediate and production casing shall be set at any time when drilling below the surface casing and hole conditions justify setting casing. This casing will be cemented in such a manner that all hydrocarbons, water aquifers, lost-circulation or zones of significant porosity and permeability, significant beds containing priority minerals, and abnormal pressure intervals are covered or isolated.

3.5. Prior to drilling the plug after cementing, all casing strings except the drive or structural casing, shall be pressure tested. This test shall not exceed the rated working pressure of the casing. If the pressure declines more than ten percent in 30 minutes, or if there are other indications of a leak, corrective measures must be taken until a satisfactory test is obtained. All casing pressure tests shall be recorded on the driller's log.

4. Blowout preventers and related well control equipment shall be installed, and tested in a manner necessary to prevent blowouts and shall be subject to the following special conditions:

4.1. Prior to drilling below the surface casing, blowout prevention equipment shall be installed and maintained ready for use until drilling operations are completed.

4.2. An inside blowout preventer assembly and a full opening string safety valve in the open position shall be maintained on the rig floor at all times while drilling operations are being conducted. Valves shall be maintained on the rig floor to fit all pipe in the drill string. A top kelly cock shall be installed below the swivel and another at the bottom of the kelly of such design that it can be run through the blowout preventers.

4.3. Before drilling below the surface casing the blowout prevention equipment shall include a minimum of:

4.3.1. Three remotely and manually controlled, hydraulically operated blowout preventers with a rated working pressure which exceeds the maximum anticipated surface

pressure, including one equipped with pipe rams, one with blind rams and one hydril type.

4.3.2. A drilling spool with side outlets, if side outlets are not provided in the blowout preventer body.

4.3.3. A choke manifold.

4.3.4. A kill line.

4.3.5. A fill-up line.

4.4. Ram-type blowout preventers and related control equipment shall be tested to the rated working pressure of the stack assembly or to the working pressure of the casing, whichever is the lesser, at the following times:

4.4.1. When installed.

4.4.2. Before drilling out after each string of casing is set.

4.4.3. Not less than once each week while drilling.

4.4.4. Following repairs that require disconnecting a pressure seal in the assembly.

4.5. The hydril-type blowout preventer shall be tested to 70 percent of the pressure testing requirements of ram-type blowout preventers. The hydril-type blowout preventer shall be actuated on the drill pipe once each week.

4.6. Accumulators or accumulators and pumps shall maintain a reserve capacity at all times to provide for repeated operation of hydraulic preventers.

4.7. A blowout prevention drill shall be conducted weekly for each drilling crew to insure that all equipment is operational and that crews are properly trained to carry out emergency duties. All blowout preventer tests and crew drills shall be recorded on the driller's log.

5. The characteristics and use of drilling mud and the conduct of related drilling procedures shall be such as are necessary to maintain the well in a safe condition to prevent uncontrolled blowouts of any well. Quantities of mud materials sufficient to insure well control shall be maintained and readily accessible for use at all times.

6. Mud testing equipment shall be maintained on the derrick floor at all times, and mud tests consistent with good operating practice shall be performed daily, or more frequently as conditions warrant. The following mud system monitoring equipment must be installed, with derrick floor indicators, and used throughout the period of drilling after setting and cementing the surface casing:

6.1. A recording mud pit level indicator including a visual and audio warning device to determine mud pit volume gains and losses.

6.2. A mud return indicator to determine when returns have been obtained, or when they occur unintentionally, and additionally to determine that returns essentially equal the pump discharge rate.

7. In the conduct of all oil and gas operations, the operator shall prevent pollution of the waters of the Great Salt Lake. The operator shall comply with the following pollution prevention requirements:

7.1. Oil in any form, liquid or solid wastes containing oil, shall not be disposed of into the waters of the lake.

7.2. Liquid or solid waste materials containing substances which may be harmful to aquatic life or wildlife, or injurious in any manner to life and property, or which in any way unreasonably adversely affects the chemicals or minerals in the lake shall not be disposed of into the waters of the lake.

7.3. Waste materials, exclusive of cuttings and drilling media, shall be transported to shore for disposal.

8. All spills or leakage of oil and liquid or solid pollutants shall be immediately reported to the division. A complete written statement of all circumstances, including subsequent clean-up operation, shall be forwarded to said agencies within 72 hours of such occurrences.

9. Standby pollution control equipment consistent with the state of the art, shall be maintained by, and shall be immediately available to, each operator.

R649-3-34. Well Site Restoration.

1. The operator of a well shall upon plugging and abandonment of the well restore the well site in accordance with these rules.

2. For all land included in the well site for which the surface is federal, Indian, or state ownership, the operator shall meet the well site restoration requirements of the appropriate surface management agency.

3. For all land included in the well site for which the surface is fee or private ownership, the operator shall meet the well site restoration requirements of the private landowner or the minimum well site restoration requirements established by the division.

4. Well site restoration on lands with fee or private ownership shall be completed within one (1) year following the plugging of a well unless an extension is approved by the division for just and reasonable cause.

5. These rules shall not preclude the opportunity for a private landowner to assume liability for the well as a water well in accordance with R649-3-24.6.

6. The operator shall make a reasonable effort to establish surface use agreements with the owners of land included in the well site prior to the commencement of the following actions on fee or private surface:

6.1 Drilling a new well.

6.2. Reentering an abandoned well.

6.3. Assuming operatorship of existing wells.

7. Upon application to the division to perform any of the aforementioned and prior to approval of such actions by the division, the operator shall submit an affidavit to the division stating whether appropriate surface use agreements have been established with and approved by the surface landowners of the well site.

8. If necessary and upon request by the division, the operator shall submit a copy of the established surface use agreements to the division.

9. If no surface use agreement can be established, the division shall establish minimum well site restoration requirements for any well located on fee or private surface for the purposes of final bond release.

10. Established surface use agreements may be modified or terminated at any time by mutual consent of the involved parties; however, the operator shall notify the division if such is the case and if a surface use agreement is terminated without a new agreement established, the division shall establish minimum well site reclamation requirements.

11. The operator shall be responsible for meeting the requirements of any surface use agreement, and it shall be

assumed by the division until notified otherwise that surface use agreements remain in full force and effect until all the requirements of the agreement are satisfied or until the agreement has been terminated by mutual consent of the involved parties.

12. The surface use agreement shall stipulate the minimum well site restoration to be performed by the operator in order to allow final release of the bond.

13. The final bond release by the division shall include a determination by the division whether or not the operator has met the requirements of an established surface use agreement, and the division may suspend final bond release until the operator has completed all the requirements of the surface use agreement.

14. The agreement may state requirements for well site grading, contouring, scarification, reseeding, and abandonment of any equipment or facilities for which the landowner agrees to assume liability.

15. The agreement shall not address operations regulated by the rules and orders of the board such as:

15.1. Disposal of drilling fluid, produced fluid, or other fluid waste associated with the drilling and production of the well.

15.2. Reclamation or treating of waste crude oil.

15.3. Any other operation or condition for which the board has jurisdiction.

16. If the operator cannot establish surface use agreements then the operator shall so notify the division.

17. Within 30 days of the notification or as soon as weather conditions permit, the division shall conduct an inspection and evaluation of the well site in order to establish minimum well site restoration requirements for the purpose of final bond release.

18. The operator shall be given notice by the division of the date and time of the inspection, and if the operator cannot attend the inspection at the scheduled date and time, the division may reschedule the inspection to allow the operator to participate.

19. The surface landowner, agent or lessee shall be given notice by the operator of such inspection and may participate in the inspection; however, if the surface landowner cannot attend the inspection, the division shall not be required to reschedule the inspection in order to allow the surface landowner to participate.

20. The evaluation shall consider the condition of the land prior to disturbance, the extent of proposed disturbance, the degree of difficulty to conduct complete restoration, the potential for pollution, the requirements for abating pollution, and the possible land use after plugging and restoration are completed.

21. Within 30 days after performing the inspection, the division shall provide the operator with the results of the inspection and the evaluation listing the minimum well site restoration requirements established by the division.

22. The division shall retain a record of the inspection and the evaluation, and if necessary and upon written request by an interested party, the division shall provide a copy of the minimum well site restoration requirements established by the division.

23. If any person disagrees with the results of the inspection and the evaluation and desires a reconsideration of the minimum well site restoration requirements established by the division, such person may submit a request to the board for a hearing and order to modify the requirements.

24. The board, after proper notice and hearing, may issue an order modifying the minimum well site restoration requirements established by the division.

25. The minimum well site restoration requirements established by the division or by board order shall be considered part of any permit granted by the division to conduct operations at a well site, and the inability of the operator to meet such requirements shall be considered grounds for forfeiture of the bond.

26. If the minimum well site restoration requirements suggest to the division that bond coverage for a well should be increased, the division shall take action as stated in R649-3-1.

R649-3-35. Wildcat Wells.

1. For purposes of qualifying for a severance tax exemption under Section 59-5-102(2)(d), an operator must file an application with the division for designation of a wildcat well. The application may be filed prior to drilling the well, and a tentative determination of the wildcat designation will be issued at that time. An application or request for final designation of wildcat status as appropriate, must be filed at the time of filing of Form 8, Well Completion or Recompletion Report and Log. The application shall contain, where applicable, the following information:

1.1. A plat map showing the location of the well in relation to producing wells within a one mile radius of the wellsite.

1.2. A statement concerning the producing formation or formations in the wildcat well and also the producing formation or formations of the producing wells in the designated area, including completion reports and other appropriate data.

1.3. Stratigraphic cross sections through the producing wells in the designated area and the proposed wildcat well.

1.4. A statement as to whether the well is in a known geologic structure. However, whether the well is in a known geologic structure shall not be the sole basis of determining whether the well is a wildcat.

1.5. Bottomhole pressures, as applicable, in a wildcat well compared to the wells producing in the designated area from the same zone.

1.6. Any other information deemed relevant by the applicant or requested by the division.

2. Information derived from well logs, including certain information in completion reports, stratigraphic cross sections, bottomhole pressure data, and other appropriate data provided in R649-3-35-1 will be held confidential in accordance with R649-2-11 at the request of the operator.

3. The division shall review the submitted information and advise the operator and the State Tax Commission of its decision regarding the wildcat well designation as related to Section 59-5-102(2)(d).

4. The division is responsible for approval of a request for designation of a well as a wildcat well. If the operator disagrees with the decision of the division, the decision maybe appealed

to the board. Appeals of all other tax-related decisions concerning wildcat wells should be made to the State Tax Commission.

R649-3-36. Shut-in and Temporarily Abandoned Wells.

1. Wells may be initially shut-in or temporarily abandoned for a period of twelve (12) consecutive months. If a well is to be shut-in or temporarily abandoned for a period exceeding twelve (12) consecutive months, the operator shall file a Sundry Notice providing the following information:

1.1. Reasons for shut-in or temporarily abandonment of the well,

1.2. The length of time the well is expected to be shut-in or temporarily abandoned, and

1.3. An explanation and supporting data if necessary, for showing the well has integrity, meaning that the casing, cement, equipment condition, static fluid level, pressure, existence or absence of Underground Sources of Drinking Water and other factors do not make the well a risk to public health and safety or the environment.

2. After review the Division will either approve the continued shut-in or temporarily abandoned status or require remedial action to be taken to establish and maintain the well's integrity.

3. After five (5) years of nonactivity or nonproductivity, the well shall be plugged in accordance with R649-3-24, unless approval for extended shut-in time is given by the Division upon a showing of good cause by the operator.

4. If after a five (5) year period the well is ordered plugged by the Division, and the operator does not comply, the operator shall forfeit the drilling and reclamation bond and the well shall be properly plugged and abandoned under the direction of the Division.

R649-3-37. Enhanced Recovery Project Certification.

1. In order for incremental production achieved from an enhanced recovery project to qualify for the severance tax rate reduction provided under Subsection 59-5-102(4), the operator on behalf of the producers shall present evidence demonstrating that the recovery technique or techniques utilized qualify for an enhanced recovery determination and the Board must certify the project as an enhanced recovery project.

2. For enhanced recovery projects certified by the Board after January 1, 1996:

2.1. As part of the process of certifying incremental production which qualifies for a reduction in the severance tax rate under Subsection 59-5-102(4), the operator shall furnish the Division an extrapolation (projection) and tabulation of expected non-enhanced recovery of oil and gas production from the project. The projection shall be for not less than seventy-two (72) months commencing with the first month following the project certification by the Board. The projection shall be based on production history of all wells within the project area for not less than twelve (12) months immediately preceding either certification or commencement of the project; reservoir and production characteristics; and the application of generally accepted petroleum engineering practices. The projected production volumes approved by the division shall serve as the base level production for purposes of determining the incremental oil and gas production which qualifies for a reduction in the severance tax rate.

2.2. The operator shall provide a statement as to all assumptions made in preparing the projection and any other information concerning the project that the division may reasonably require in order to evaluate the operator's projection.

2.3. An operator's request for incremental production certification may be approved administratively by the Director or authorized agent. The Director or authorized agent shall review the request within 30 days after its receipt and advise the operator of the decision. If the operator disagrees with the Director or authorized agent's decision, the operator may request a hearing before the Board at its next regularly scheduled hearing. The Director or authorized agent may also refer the matter to the Board if a decision is in doubt.

2.4. Upon approval of a request for incremental production certification, the Director or authorized agent shall forward a copy of the certification to the Utah Tax Commission.

KEY: oil and gas law
October 1, 2001 40-6-1 et seq.
Notice of Continuation April 30, 1997

R710. Public Safety, Fire Marshal.
R710-3. Assisted Living Facilities.
R710-3-1. Introduction.

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts for the purpose of establishing minimum standards for prevention of fire and for the protection of life and property against fire and panic in assisted living facilities.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 Uniform Fire Code (UFC), Volume 1, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-3-3, et seq.

1.2 Uniform Building Code (UBC), Volume 1, 1997 edition, as published by the International Conference of Building Officials (ICBO), and as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

1.2.1 Uniform Building Code (UBC), Volume 1, Appendix Chapter 3, Division IV - Requirements for Group R, Division 4 Occupancies, 1997 edition, as referenced in Statewide Amendment, Uniform Building Code, effective March 5, 1992.

1.3 Copies of the above code are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-3-2. Definitions.

"Ambulatory" means a person who is capable of achieving mobility sufficient to exit without the assistance of another person. An equivalency to "Ambulatory" may be approved under the conditions stated in Section 3.3.7.

"Assisted Living Facility" means:

(1) a Type I Assisted Living Facility, which is a residential facility that provides a protected living arrangement for ambulatory, nonrestrained persons who are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

(2) a Type II Assisted Living Facility, which is a residential facility that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent.

(3) Assisted Living Facilities shall be classified as follows:

(a) "Type I and II Limited Capacity Assisted Living Facility" means a facility accommodating not more than five residents, excluding staff.

(b) "Type I and II Small Assisted Living Facility" means a facility accommodating more than five and not more than sixteen residents, excluding staff.

(c) "Type I and II Large Assisted Living Facility" means a facility accommodating more than sixteen residents.

"Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

"Board" means Utah Fire Prevention Board.

"ICBO" means International Conference of Building Officials.

"IFCI" means International Fire Code Institute.

"Licensing Authority" means the Utah Department of Health or the Utah Department of Human Services.

"Semi-independent" means a person who is:

A. physically disabled but able to direct his or her own care; or

B. cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

"SFM" means State Fire Marshal.

"UBC" means Uniform Building Code.

"UFC" means Uniform Fire Code.

R710-3-3. Amendments and Additions.

3.1 General Requirements

3.1.1 All facilities shall be inspected annually and obtain a certificate of fire clearance signed by the AHJ.

3.1.2 All facility administrators shall develop emergency plans, provide staff training in the usage of all emergency equipment to include portable fire extinguishers, hood systems, fire alarms, and fire drills, in addition to those requirements in the UFC, Article 13.

3.2 Type I Assisted Living Facilities

3.2.1 Type I Limited Capacity Assisted Living Facilities shall be constructed in accordance with UBC, Group R, Division 3 Occupancies; and maintained in accordance with the UBC and UFC.

3.2.2 Type I Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.3 Residents in Type I Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

3.2.4 In Type I Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have escape or rescue windows as required in UBC, Chapter 3, Section 310.4.

3.2.5 In Type I Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed in each sleeping room and access hallway.

3.2.6 Type I Small Assisted Living Facilities shall be constructed in accordance with UBC, Appendix Chapter 3, Division IV - Requirements for Group R, Division 4 Occupancies; and maintained in accordance with the UBC and UFC.

3.2.7 Type I Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.8 Type I Large Assisted Living Facilities shall be constructed in accordance with UBC, Group I, Division 2; and maintained in accordance with the UBC and UFC.

3.3 Type II Assisted Living Facilities

3.3.1 Type II Limited Capacity Assisted Living Facilities shall be constructed in accordance with UBC, Appendix

Chapter 3, Division IV, Requirements for Group R, Division 4 Occupancies; and maintained in accordance with the UBC and UFC.

3.3.2 Type II Limited Capacity Assisted Living Facilities shall have an approved automatic fire extinguishing system installed in compliance with the UBC, or provide a staff to a resident ratio of one to one on a 24 hour basis.

3.3.3 Type II Small Assisted Living Facilities shall be constructed in accordance with UBC, Group I, Division 2; and maintained in accordance with the UBC and UFC.

3.3.4 Type II Small Assisted Living Facilities shall have a minimum corridor width of six feet.

3.3.5 Type II Large Assisted Living Facilities shall be constructed in accordance with UBC, Group I, Division 2; and maintained in accordance with the UBC and UFC.

3.3.6 Type II Large Assisted Living Facilities shall have a minimum corridor width of six feet.

3.3.7 Upon request to the Utah Department of Health for a non-ambulatory variance as allowed in Utah Administrative Code, R432-2-18, the following conditions shall be met:

(a) The attending physician's diagnosis and orders for care.

(b) Hospice plan of care if applicable

(c) The facilities service plan which includes a statement that the facility is willing and capable of meeting the residents needs.

(d) A statement from the responsible party stating that they will be involved in the plan of care.

(e) The resident will be provided with 24 hour/7 day one to one care and that care giver will be capable of exiting the resident from the facility in an emergency.

(f) The authority having jurisdiction will be sent a copy of this variance.

R710-3-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-3-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or the codes adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portions as may be declared invalid.

R710-3-6. Conflicts.

In the event where separate requirements pertain to the same situation in the adopted codes, the more restrictive requirement shall govern, as determined by the AHJ.

R710-3-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: assisted living facilities
September 4, 2001 **53-7-204**
Notice of Continuation June 19, 1997

R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they will provide basic telecommunications service at just, reasonable and affordable rates; and,

2. to govern the relationship between the fund and the trust fund established under 54-8b-12, and establish the mechanism for the phase-out and expiration of the latter fund.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail","wholesale", or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104,110 Stat.56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. Trust Fund -- means the Trust Fund established by 54-8b-12.

J. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by January 2, 2001.

K. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall

be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file reports with the Commission containing information on the average revenue per line calculations, projections of future USF needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Periodic Review -- The administrator, under the direction of the Commission, shall perform a periodic review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

R746-360-4. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed shall equal 0.34 percent of billed intrastate retail rates.

R746-360-5. Fund Remittances and Disbursements.

A. Remitting Surcharge Revenues --

1. Telecommunications corporations, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the Commission within 45 days after the end of each month.

2. Telecommunications corporations eligible for USF support funds shall make remittances as follows:

a. Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

b. Net fund contributions shall be remitted to the Commission within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

3. The Commission will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

B. Distribution of Funds -- Net Fund distributions to qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

R746-360-6. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an "eligible telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-6A.1.,

a. Non-rate-of-return Incumbent telephone corporations shall make Commission approved, aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate Ceiling -- To be eligible, a telecommunications corporation may not charge retail rates in excess of the Commission determined Affordable Base Rates for basic telecommunications service or vary from the terms and conditions determined by the Commission for other telecommunications services for which it receives Universal Service Fund support.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-7. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds --Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy model cost estimates of costs to provide residential Basic Telecommunications Service in the designated support area and the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active residential access lines in the designated support area, times the eligible telecommunications corporation's number of active residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

A. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area.

2. Telecommunications corporations other than incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

B. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

C. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, or potential customers not presently receiving service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

1. In considering the one-time distribution application, the Commission will examine relevant factors including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, the provisions for service or line extension currently available, and whether the one-time distribution is in the public interest.

B. Maximum Amount -- The maximum one-time distribution will be no more than that required to make the net investment for the designated area, customer, or customers equivalent to the relevant proxy model cost estimate for non-rate-of-return regulated telecommunications corporations or the relevant cost estimate for rate-of-return regulated telecommunications corporations.

C. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

D. Notice and Hearing -- Following notice that a one-time distribution application has been filed, a LEC may request a hearing or seek to intervene to protect its interests.

E. Bidding for Unserved Areas -- A telecommunications corporation will be selected to serve in an unserved area on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

KEY: public utilities, telecommunications, universal service*

September 1, 2001 **54-7-25**
54-7-26
54-8b-12
54-8b-15

R765. Regents (Board of), Administration.

R765-608. Utah Engineering and Computer Science Loan Forgiveness Program.

R765-608-1. Purpose.

To provide Utah Higher Education Assistance Authority ("UHEAA") policy and procedures for implementing the Utah Engineering and Computer Science Loan Forgiveness Program ("UECLP" or "program"), UCA 53B-6, Section 105.7, enacted in S.B. 61 by the 2001 General Session of the Utah Legislature.

R765-608-2. References.

2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 6, Section 105-7.

2.2. State Board of Regents Policy R610, Board of Directors of the Utah Higher Education Assistance Authority

R765-608-3. Effective Date.

These policies and procedures are effective September 1, 2001.

R765-608-4. Policy.

4.1. Program Description - UECLP is a student loan forgiveness program authorized as part of the higher education Engineering and Computer Science Initiative established with an effective date of July 1, 2001. UCA 53B, Section 105.7 provides for establishment of the program "to recruit and train engineering, computer science, and related technology students to assist in providing for and advancing the intellectual and economic welfare of the state," and authorizes the State Board of Regents to provide by rule for the overall administration of the program, consistent with the general student loan provisions in Title 53B and policy guidelines contained in the Section.

4.2. Program Administration - The Board of Regents has delegated to the UHEAA Board of Directors the authority to govern UECLP on behalf of the Board of Regents. The program is administered by the Associate Commissioner for Student Financial Aid as Executive Director of UHEAA, reporting to the Commissioner of Higher Education.

4.3. Program Design - The program utilizes UHEAA-guaranteed Federal Family Education Loan Program (FFELP) Stafford Student Loans and Federal Perkins Student Loans as the vehicle for providing UECLP loan forgiveness. A students enrolled at a Qualifying Institution in a Qualifying Program applies to UHEAA, with an endorsement from the dean of the school or college in which enrolled, for a Certificate for Student Loan Forgiveness which guarantees that upon completion of the requirements for loan forgiveness the Recipient will receive a direct credit for reduction of the outstanding principal balance(s) of the Recipient's outstanding Stafford or Perkins Student Loan(s). The student applies for and receives the Stafford and/or Perkins Student Loans through regular application and award procedures. Upon completion of the Qualifying Program, and Qualifying Employment, the Recipient submits an Application for Student Loan Forgiveness to UHEAA, UHEAA verifies the Recipient's qualification and the loan forgiveness amount for which the Recipient qualifies, and promptly processes the payment of outstanding principal on the Recipient's student loan(s). If the remaining principal balance on the Recipient's student loans is less than the forgiveness amount for which the Recipient qualifies, UHEAA will pay any amount above the outstanding balance directly to the Recipient, up to the amount of Stafford or Perkins Student Loan principal actually borrowed by the Recipient while enrolled in the Qualifying Program. The loan forgiveness amount for which the Recipient qualifies will include the amount of Tuition and Fees, as defined in section 4.4.9, which is applicable to the academic year for which the Application for Student Loan Forgiveness is submitted, plus the portion of the Recipient's loan interest accrued or paid which is applicable to the principal amount to be paid on the Recipient's behalf.

4.4. Definitions -

4.4.1. Qualifying Institution - A college or university of the Utah System of Higher Education (USHE) which offers one or more Qualifying Programs.

4.4.2. Qualifying Program - An accredited engineering, computer science, or related technology baccalaureate degree program.

4.4.2.1. Related technology baccalaureate degree programs shall be limited to those certified by the Commissioner of Higher Education, in accordance with such criteria as may be established pursuant to UCA 53-B-6-105.

4.4.3. Eligible Student - A student who is enrolled on a full-time basis in a Qualifying Institution in a Qualifying Program, in good standing, and maintaining satisfactory academic progress as defined by the institution.

4.4.4. Recipient - A person who applies for and receives a UECLP Certificate for Student Loan Forgiveness from UHEAA.

4.4.5. Certificate for Student Loan Forgiveness - A certificate issued by UHEAA to an Eligible Student, which guarantees forgiveness of student loan principal plus related loan interest paid by the Recipient, up to the amount of Tuition and Fees paid for a specified number of years of enrollment in a Qualifying Program for up to a specified number of years of Qualifying Employment.

4.4.6. Stafford Student Loan - A FFELP Stafford student loan, either subsidized or unsubsidized, guaranteed by UHEAA.

4.4.6.1. A subsidized Stafford Student Loan is certified by the student's institution on the basis of financial need, and qualifies for payment of interest by the U.S. Secretary of Education on the student's behalf while the student is enrolled at least half-time and during a six-month grace period after the student graduates or ceases to be enrolled at least half-time.

4.4.6.2. An unsubsidized Stafford Student Loan is certified by the student's institution either as needed in addition to the full subsidized loan amount, or for a student who does not qualify on the basis of financial need. The recipient of an unsubsidized Stafford Student Loan is responsible for payment of interest accruing from the date of disbursement of the loan, but may choose to have the interest deferred until the loan enters repayment (at the end of the grace period), at which time the interest is capitalized and added to the outstanding principal. The interest on an unsubsidized Stafford Student Loan is at the same favorable rates as determined annually according to statute for a subsidized Stafford Student Loan.

4.4.6.3. A student is required to file a Free Application for Federal Student Aid (FAFSA) to establish eligibility for either a subsidized or an unsubsidized Stafford Student Loan, but is

entitled without limitation to receive the loan, up to statutorily-specified loan amounts, if eligible.

4.4.7. Perkins Student Loan - A Federal Perkins student loan awarded by the student's institution. Availability of Perkins Student Loans is limited, based on available funds, but a Perkins Student Loan may carry a more favorable interest rate than a Stafford Student Loan. Interest on a Perkins Student Loan also is paid on behalf of the borrower while the borrower is enrolled at least half time and during the applicable grace period thereafter. A student is required to file a FAFSA to establish eligibility for a Perkins Student Loan, but might not receive the loan even if eligible, due to limited availability.

4.4.8. Year of Qualifying Employment - Full-time employment within Utah, for a full 12-month period, in a position requiring the baccalaureate degree, in engineering or in the field of computer science or in a related technology field. Provided, however, that, if a Recipient's Qualifying Employment is as a public school teacher or USHE faculty member, the annual school year or academic year contract length shall qualify as a Year of Qualifying Employment.

4.4.8.1. For purposes of this definition, employment in the fields of engineering or computer science or in a related technology field must reasonably be demonstrated to utilize skills and knowledge required for an applicable Qualifying Program.

4.4.9. Tuition and Fees - Tuition and general fees applicable to the Qualifying Program, for the institution in which the recipient is enrolled, for a full-time-equivalent (FTE) student, as defined in annual tuition and fee schedules approved by the State Board of Regents.

4.5. Application for a Certificate for Student Loan Forgiveness - An Eligible Student may apply for a Certificate for Student Loan Forgiveness at any time during an academic year in which enrolled in a Qualifying Program. The application may be for the year in which currently enrolled and subsequent years, except that it may not include years prior to the academic year during which the application is submitted and the total number of years covered by the application may not exceed five.

4.5.1 The application shall include a declaration of intent to complete the Qualified Program in which enrolled, or an equivalent Qualifying Program, and to work within Utah in Qualifying Employment for a period of four years after graduation.

4.6. Application for Student Loan Forgiveness - A Recipient may apply for forgiveness of the amount of one year of Tuition and Fees paid, as a reduction in outstanding loan principal or as a direct payment as provided for in 4.3, after each completed Year of Qualifying Employment covered by the Certificate for Loan Forgiveness, subject to the following limitation:

4.6.1. The Certificate for Student Loan Forgiveness shall provide that its guarantee, and the Recipient's eligibility to submit an Application for Student Loan Forgiveness, shall expire at the end of the 72nd month (six years) after the Recipient's date of graduation with the baccalaureate degree. Provided, however, that a period of full-time enrollment in a graduate degree program related to the Recipient's Qualifying Program shall not be counted as part of the 72 months following the Recipient's graduation with the baccalaureate degree.

4.7. Eligibility for UHEAA Borrower Benefits - Regardless of whether or not the Recipient qualifies for and receives forgiveness of any part of the principal on a Stafford Student Loan, the Recipient will remain eligible for all forbearances, deferments, and other statutory privileges under the FFELP, and also shall remain eligible for all applicable principal reductions and interest rate reductions under UHEAA's borrower benefit programs. A Recipient who does qualify for and receive forgiveness of principal on a Stafford Student Loan under UECLP also shall remain eligible for all applicable principal reductions and interest rate reductions under UHEAA's borrower benefit programs.

4.8 Limited Availability and Allocation Principles - Funding for UECLP is dependent on annual legislative appropriations, and the ability to underwrite Certificates for Student Loan Forgiveness is limited. The Program Administrator shall establish an application and award calendar annually after the amount available for new awards is determined. Selection criteria established as part of the annual calendar shall include an initial tentative allocation by Qualifying Institutions proportionate to the number of engineering and computer science baccalaureate degrees awarded by each institution in the most recent academic year for which information is available, except that a minimum amount of $10,000 or five percent of the amount available, whichever is the lesser, shall be established for each Qualifying Institution. Selection of Recipients from applicants certified by a Qualifying Institution may take into account recommendations from an official designated by the president of the institution or may be on the basis of the order of receipt of the applications for Certificates for Student Loan Forgiveness.

KEY: higher education, student loans*
September 1, 2001 **53B-6**

R850. School and Institutional Trust Lands, Administration.
R850-140. Development Property.
R850-140-100. Authorities.

This rule implements Sections 6, 8, 10 and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution and Subsection 53C-1-302(1)(a) and Section 53C-4-101, which authorize the director of the School and Institutional Trust Lands Administration to establish rules and criteria for the disposition of trust lands.

R850-140-200. Purpose of Development Property Rules.

This rule permits the agency to designate trust land as development property and thereby (i) subject agency activities in connection with such properties to this rule; and (ii) exempt agency activities in connection with such properties from the rules listed in R850-140-600.

R850-140-250. Definitions.

For the purposes of this rule:

1. Development property: a parcel of trust land that has been designated a development property pursuant to the director's determination that the parcel meets the criteria established in R850-140-300(1).

2. Development transaction: a transaction entered into by the agency for the purpose of generating financial returns to the trust on a particular development property. Development transactions include sales, exchanges, ground leases, development leases, build-to-suit leases, joint ventures, and other business arrangements.

R850-140-300. Designation of Development Property.

1. The director may designate a property as a development property upon the director's determination that the following criteria are met:

(a) The property is located in or near to either a high growth or urban area of the State or, in more rural settings, the property is of a character suitable for commercial, industrial, resort, residential or other real estate development activities; and

(b) The agency has received inquiry from private parties concerning the potential for development of the property or the agency, after preliminary analysis, has determined that the probable highest and best use for the property is for development purposes; and

(c) The agency believes that it is timely and in the best interests of the trust to consider a development transaction involving the property.

2. The director shall maintain a listing of each property designated as a development property. The listing shall be available to the public and shall include the date of designation, together with a written finding designating the property to be a development property. If the agency fails to achieve a transaction involving a property designated as development property within a period of three (3) years following such property's designation, the property shall cease to be a development property and shall be removed from the development listing. Properties may be redesignated as a development property at a later time if the director finds it to be in the best interests of the trust.

R850-140-400. Development Property Transactions.

1. The agency may solicit and reject proposals, make offers, counter offers and otherwise negotiate freely with interested parties in its efforts to arrange development transactions that are in the best interests of the trust. Development transactions will be structured according to the circumstances of the market and the attributes of the particular development property. In undertaking such efforts, the agency shall consider the following criteria with regard to a proposed development transaction:

(a) The character, reputation, financial status, credit history and prior real estate development experience of the party with whom the development transaction is proposed.

(b) The financial attributes of the proposed development transaction.

(c) The legal structure of the proposed development transaction.

(d) The potential effects of the proposed development transaction upon nearby trust lands.

Development transactions shall result in the trust receiving not less than fair market value for the sale, use or exchange of the development property in question.

2. At such time as the agency determines that it is appropriate to seek a development transaction, the agency shall initiate an advertising program designed to effectively solicit interested parties. Advertising may be implemented through print media, signage, direct mail or other appropriate marketing methods.

3. After the agency has identified an interested party with whom to seek a development transaction and negotiated core business terms with the interested party, the director will deliver a summary description of the proposed development transaction to the board.

4. Prior to completing a development transaction, the agency shall conduct a financial analysis of the transaction. The financial analysis shall examine whether the development transaction provides for the return to the trust of at least fair market value for the sale, use or exchange of the property in question. Analysis of fair market value shall be based upon market research, staff experience or outside appraisals, or a combination of these factors as the agency determines necessary based on the particular circumstances of each development transaction.

5. Upon completion of the requirements set forth in R850-140-400(1)-(4), a development transaction shall be presented to the director or the board, as required by law, for final approval. The board or the director, as appropriate, may approve or reject a proposed transaction consistent with their fiduciary obligations.

6. Formal contract documentation of any development transaction shall be subject to approval by a representative of the attorney general's office. The party with whom the trust is negotiating a development transaction shall have no vested rights in and to the development property in question until the formal contract documents have been approved by the representative of the attorney general's office, approved by the board as appropriate, executed by the director and delivered.

7. If, as a result of a development transaction, a property is improved and/or subdivided, such property shall be conveyed

or leased for consideration no less than the fair market value of such property as improved and subdivided. The consideration resulting from the transaction on such improved and/or subdivided property shall be allocated between the trust and the developing entity as provided for in the development transaction.

R850-140-500. Amendments to Development Transactions.

When promoting, negotiating, approving and documenting amendments to a development transaction, the agency shall adhere to the following conditions:

(a) No amendment shall be entered into which results in the trust receiving less than fair market value for the sale, use or exchange of the property in question.

(b) In connection with any amendment that materially modifies the financial terms of a development transaction, the director shall deliver a summary description of the terms of the proposed amendment to the members of the board.

(c) Upon completion of the requirements set forth in paragraph (b) above, the proposed amendment shall be presented to the director for final approval. Amendments to joint ventures and other business arrangements shall require approval by the board. The board or the director as appropriate may approve or reject a proposed amendment to a development transaction consistent with their fiduciary obligations.

(d) Formal contract documentation of any amendment to a development transaction shall be subject to approval by a representative of the attorney general's office. The party with whom the trust is negotiating the amendment shall have no vested rights in and to the terms of the proposed amendment until the formal contract documents are approved by the representative of the attorney general's office, approved by the board as appropriate, executed by the director, and delivered.

R850-140-600. Exemption From Rules.

The agency, in connection with its activities in promoting, negotiating, approving and documenting development transactions, shall be subject to all rules and board policies applicable to the agency, except the following, which shall not be applicable:

(a) Rule 850-3. Applicant Qualifications and Application Forms.

(b) Rule 850-4. Application Fees and Assessments.

(c) Rule 850-5. Payments, Royalties, Audits and Assessments.

(d) Rule 850-30. Special Use Leases.

(e) Rule 850-40. Easements.

(f) Rule 850-80. Sale of Trust Lands.

(g) Rule 850-81. Right of Noncompetitive Purchase.

(h) Rule 850-82. Preference Right Sales.

(i) Rule 850-90. Land Exchanges.

KEY: development, land sale, real estate
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R865. Tax Commission, Auditing.
R865-9I. Income Tax.
R865-9I-2. Definitions of Resident and Military Personnel Pursuant to Utah Code Ann. Section 59-10-103.

A. "Resident" or "resident taxpayer" means "resident individual" as defined in Utah Code Ann. Section 59-10-103.

B. "Nonresident" or "nonresident taxpayer" means "nonresident individual" as defined in Utah Code Ann. Section 59-10-103.

C. "Part-year resident" means an individual who changes his status during the tax year from a resident to a nonresident or from a nonresident to a resident.

D. "Domicile" means the place where an individual has a true, fixed, permanent home and principal establishment, and to which place he has (whenever he is absent) the intention of returning. It is the place in which a person has voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home. After domicile has been established, two things are necessary to create a new domicile: first, an abandonment of the old domicile; and second, the intention and establishment of a new domicile. The mere intention to abandon a domicile once established is not of itself sufficient to create a new domicile; for before a person can be said to have changed his domicile, a new domicile must be shown.

E. A person in active military service shall not lose his domicile in Utah solely by reason of being absent under military orders. A person in active military service stationed in Utah solely by reason of military orders does not thereby establish a new domicile in this state for income tax purposes. Reference: Soldiers and Sailors Relief Act, Title 50, U.S. Code Section 574.

1. It is possible for an individual in active military service to change his domicile by definite intent supported by actions. He may be required to prove any change by disclosing actions taken.

2. A nonresident serviceman is tax exempt only on his active service pay; all other income is taxable as provided by the nonresident provisions of the Utah law.

3. The spouse of a person in active military service generally is considered to have that person's domicile and is subject to income tax laws and rules that apply to the service person.

R865-9I-3. Credit for Income Tax Paid by an Individual to Another State Pursuant to Utah Code Ann. Section 59-10-106.

A. A Utah resident taxpayer is required to report his entire state taxable income pursuant to Utah Code Ann. Section 59-10-106 even though part of the income may be from sources outside this state.

B. Except to the extent allowed in D., a resident taxpayer may claim the credit provided in Section 59-10-106 by:

1. filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state;

2. attaching a schedule for each state to which taxes were due, properly filled in to determine each allowable credit; and

3. attaching a signed copy of each return filed in another state for the same period.

C. A part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state. The credit is claimed in the same manner as claimed by a full-year resident, but only for that portion of the year that the nonresident taxpayer was living in Utah. A schedule of income taxed in more than one state, apportioning income between resident and nonresident status, must be attached to the part-year resident return.

D. For only those states in which a resident professional athlete has participated in his team's composite return or simplified withholding, a resident professional athlete may claim the credit provided in Section 59-10-106 by:

1. filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state; and

2. attaching a summary, prepared by the team or the team's authorized representative, indicating both the amount of the athlete's income allocated to all other states in which the athlete has participated in his team's composite return or simplified withholding, and the amount of income tax paid by the athlete to those states.

E. The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following:

1. the amount of tax paid to the other state; or

2. a percentage of the total Utah tax. This percentage is determined by dividing the total federal adjusted gross income into the amount of the federal adjusted gross income taxed in the other state.

R865-9I-4. Equitable Adjustments Pursuant to Utah Code Ann. Section 59-10-115.

A. Every taxpayer shall report and the Tax Commission shall make or allow such adjustments to the taxpayer's state taxable income as are necessary to prevent the inclusion or deduction for a second time on his Utah income tax return of items involved in determining his federal taxable income. Such adjustments shall be made or allowed in an equitable manner as defined in Utah Code Ann. 59-10-115 or as determined by the Tax Commission consistent with provisions of the Individual Income Tax Act.

B. In computing the Utah portion of a nonresident's federal adjusted gross income; any capital losses, net long-term capital gains, and net operating losses shall be included only to the extent that these items were not taken into account in computing the taxable income of the taxpayer for state income tax purposes for any taxable year prior to January 2, 1973.

R865-9I-6. Returns by Husband and Wife When One is a Resident and the Other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119.

A. Except as provided in B., a husband and wife, one being a nonresident and the other a resident, who file a joint federal income tax return, but separate state income tax returns shall determine their separate state taxable income as follows:

1. First, the amount of the total federal adjusted gross income ("FAGI") pertaining to each spouse shall be determined. Any adjustments that apply to both spouses shall be divided between the spouses in proportion to the respective incomes of

the spouses.

2. Next, each spouse is allocated a portion of each deduction and add back item.

a) To determine this allocation, each spouse shall:

(1) divide his or her own FAGI by the combined FAGI of both spouses and round the resulting percentage to four decimal places; and

(2) multiply the resulting percentage by the deductions and add back items.

b) The deductions and add back items allowed are as follows:

(1) state income tax deducted as an itemized deduction on federal Schedule A;

(2) other items that must be added back to FAGI on the state income tax return;

(3) itemized or standard deduction;

(4) state exemption for dependents;

(5) one-half of the federal tax liability;

(6) state income tax refund included on line 10 of the federal income tax return; and

(7) other state deductions.

3. Each spouse shall claim his or her full state personal exemption.

4. Each spouse shall determine his or her separate tax using the Utah tax rate schedules applicable to a husband and wife filing separate returns.

B. A husband and wife, one being a nonresident and the other a resident, may use an alternate method of calculating their separate state taxable incomes than the method provided in A. if they can demonstrate to the satisfaction of the Tax Commission that the alternate method more accurately reflects their separate state taxable incomes.

R865-9I-7. Change of Status As Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120.

A. Definitions:

1. "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

2. "FAGI" means federal adjusted gross income.

B. The state taxable income of a part-year resident shall be a percentage of the amount that would have been state taxable income if the taxpayer had been a full-year resident as determined under Utah Code Ann. Section 59-10-112 of the act. This percentage is the Utah portion of FAGI divided by the total FAGI, not to exceed 100 percent.

C. The Utah portion of a part-year resident's FAGI shall be determined as follows:

1. Income from wages, salaries, tips and other compensation earned while in a resident status and included in the total FAGI shall be included in the Utah portion of the FAGI;

2. Dividends actually or constructively received while in resident status shall be included in the Utah portion of FAGI. Any dividend exclusion shall be deducted from the Utah portion of FAGI using the percentage of excludable dividends received while in resident status, compared to the total excludable dividends.

3. All interest actually or constructively received while in resident status shall be included in the Utah portion of the FAGI.

4. All FAGI derived from Utah sources while in a nonresident status, as determined under Rule R865-9I-5, shall be included in the Utah portion of FAGI.

D. Income or loss from businesses, rents, royalties, partnerships, estates or trusts, small business corporations as defined by Internal Revenue Code Section 1371(b), and farming shall be included in the Utah portion of FAGI:

1. if the activities involved were concluded, or the taxpayer's connection with them terminated before or at the time of change from resident to nonresident status; or

2. if the activities were commenced or the taxpayer joined them at the time or after the change from nonresident to resident status.

Otherwise, such income or loss shall be included in the Utah portion of FAGI only to the extent derived from Utah sources as determined under Rule R865-9I-5.

E. Moving expenses deducted on the federal return may be deducted from the Utah portion of FAGI only to the extent that they are for moving into Utah and within Utah.

F. Employee business expenses may be deducted from the Utah portion of FAGI only to the extent that they pertain to the production of income included in the Utah portion of FAGI.

G. Payments by a self-employed person to a retirement plan that reduce the total FAGI may be deducted from the Utah portion of FAGI in the same proportion that the related self-employment income is included in the Utah portion of FAGI.

H. Other income, losses or adjustments applicable in determining total FAGI may be allowed or included in the Utah portion of his FAGI only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of the act or these rules as determined by the Tax Commission.

R865-9I-8. Proration When Two Returns Are Required Pursuant to Utah Code Ann. Section 59-10-121.

A. Two returns are not required when an individual changes status as resident or nonresident. Ordinarily, the total of the taxable income that would be reported on two returns will be included in one return.

B. Only in unusual circumstances as determined by the Tax Commission will the preparation of two returns be allowed or required. In this event, the returns shall be prepared in a fair and equitable manner as approved or prescribed by the Tax Commission consistent with Utah Code Ann. Section 59-10-121 and other pertinent provisions.

R865-9I-9. Taxable Year Pursuant to Utah Code Ann. Section 59-10-122.

A. If a taxpayer's taxable year is changed to a taxable period of less than 12 months as required by Utah Code Ann. Section 59-10-122 and if he is required to convert his income for the period to an annual basis for federal income tax purposes, the taxpayer shall convert his income for the period of less than a year to an annual basis for computing his state income tax.

B. Unless the Tax Commission determines a different method consistent with requirements of the act is necessary or appropriate, the income tax of the taxpayer for the period of less

than 12 months shall be computed as follows:

1. determine the state taxable income applicable to the fractional part of the year and multiply this amount by 12;

2. divide the product by the number of months in the period to arrive at the state taxable income on an annualized basis;

3. compute the tax applicable to the state taxable income as annualized;

4. divide the tax as computed on the annualized state taxable income by 12; and

5. multiply the result by the number of months in the period involved.

R865-9I-10. Adjustments Between Taxable Years After Change in Accounting Methods Pursuant to Utah Code Ann. Section 59-10-124.

A. If a taxpayer's state taxable income for any taxable year is computed under a method of accounting different from the method under which such income was computed for the previous year, the taxpayer shall attach a statement to his return setting forth all differences. This statement shall specify the amounts duplicated or omitted in full or in part as a result of such change. The Tax Commission shall make or allow any necessary adjustments to prevent double inclusion or exclusion of an item of gross income, or double allowance or disallowance of an item of deduction or credit.

R865-9I-11. Share of A Nonresident Estate or Trust, or Its Beneficiaries In State Taxable Income Pursuant to Utah Code Ann. Section 59-10-207.

A. In determining the respective shares of the beneficiaries and of the estate or trust referred to in Utah Code Ann. Section 59-10-207, consideration shall be given to the net amount of the modifications described in Utah Code Ann. Sections 59-10-114 and 59-10-115. This is particularly true for those that relate to items of income, gain, loss, and deduction and that also enter into the definition of distributable net income. Otherwise, any methods different from those prescribed in Utah Code Ann. Section 59-10-207 of the act shall be used only if approved or directed by the Tax Commission as being necessary to prevent a substantial inequity in the allocation of such shares.

R865-9I-12. Fiduciary Adjustment Pursuant to Utah Code Ann. Section 59-10-210.

A. The net amount of the modifications described in Utah Code Ann. Sections 59-10-114 and 59-10-115 that relate to items of income or deduction of an estate or trust may be determined and used as the fiduciary adjustment. Otherwise, any methods different from those prescribed in Utah Code Ann. Section 59-10-210 shall be used only if approved or directed by the Tax Commission as being more appropriate and equitable in specific cases.

R865-9I-13. Nonresident's Share of Partnership or Limited Liability Company Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, and 59-10-303.

A. Nonresident partners and nonresident members shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

B. Partnerships and limited liability companies may file form TC-65, Utah Partnership/Limited Liability Company Return of Income, as a composite return on behalf of nonresident partners or nonresident members that meet all of the following conditions:

1. Nonresident partners or nonresident members included on the return may not have other income from Utah sources. Resident partners and resident members may not be included on the composite return.

2. A schedule shall be included with the return listing all nonresident partners or nonresident members included in the composite filing. The schedule shall list all of the following information for each nonresident partner or nonresident member:

a) name;

b) address;

c) social security number;

d) percentage of partnership or limited liability company income;

e) Utah income attributable to that partner or member.

3. Nonresident partners or nonresident members that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Nonresident or Part-year Resident Form Individual Income Tax Return.

C. The tax due on the composite return shall be computed as follows:

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident partners or nonresident members included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.

D. The partnership's or limited liability company's federal identification number shall be used on the form TC-65 in place of a social security number.

R865-9I-14. Requirement of Withholding Pursuant to Utah Code Ann. Sections 59-10-401, 59-10-402, and 59-10-403.

A. Except as otherwise provided in statute or this rule, every employer shall withhold Utah income taxes from all wages paid:

1. to a nonresident employee for services performed within Utah,

2. to a resident employee for all services performed, even though such services may be performed partially or wholly without the state.

B. If the services performed by a resident employee are performed in another state of the United States, the District of Columbia, or a possession of the United States that requires withholding on wages earned, the withholding tax for Utah shall be the Utah tax required to be withheld less the tax required to be withheld under the laws, rules, and regulations of that other state, District of Columbia, or possession of the United States.

C. If the duties of a nonresident employee involve work both within and without the state, tax is withheld from that portion of the total wages that is properly allocable to Utah. The method of allocation is subject to review by the Tax Commission and may be subject to change if it is determined to be improper.

D. Income tax treatment of rail carrier and motor carrier employees is governed by 49 U.S.C. Section 14503.

E. Withholding required under Section 59-10-402 is required for all wages that are:

1. subject to withholding for federal income tax purposes;

2. paid to individuals who are deemed employees as determined by the Tax Commission, using Internal Revenue Service guidelines.

F. The number of exemptions claimed for federal withholding shall be the number of exemptions claimed for state withholding purposes.

G. Employers should use Utah income tax withholding schedules or tables published by the Tax Commission in computing the amount of state income tax withheld from their employees.

R865-9I-15. Employees Incurring No Income Tax Liability Pursuant to Utah Code Ann. Section 59-10-403.

A. With reference to Utah Code Ann. Section 59-10-403, an employer shall not be required to deduct and withhold Utah income taxes from wages paid to an employee who has filed a Federal Withholding Certificate, Form W-4E.

R865-9I-16. Collection and Payment of Income Tax Pursuant to Utah Code Ann. Section 59-10-406.

A. Forms prescribed by the Tax Commission for the purposes specified in Section 59-10-406 are:

1. Form TC-96A, Utah Employer's Quarterly Income Withholding Return and

2. Form TC-96, Utah Employer's Withholding Tax Annual Reconciliation Return.

B. These forms shall be completed and used in accordance with the instructions provided by the Tax Commission.

C. Legible copies of the federal Form W-2 must show, in addition to the name and address of the payee and payor, the payor's Utah withholding tax account number, the amount of payments made, the amounts of federal and Utah state income tax withheld in each case, the social security number of the payee and such other data as is required by the Tax Commission. The form must carry the word Utah either printed or stamped thereon in such a way as to clearly indicate the tax withheld was for Utah in accordance with the Utah laws, as distinguished from any other state or jurisdiction.

D. Sufficient copies of the W-2 form must be furnished to each taxpayer to enable attachment of a legible copy to the state income tax return.

E. If the employer fails to withhold the tax required under Section 59-10-402, and thereafter, the income subject to withholding is reported and the resulting tax is paid by the recipient, any tax required to be withheld shall not be collected from the employer. However, the employer shall remain subject to penalties and interest on the total amount of taxes that should have been withheld.

R865-9I-17. Periodic Deposit of Withheld Taxes Pursuant to Utah Code Ann. Section 59-10-407.

A. Notwithstanding the specific provisions contained in Utah Code Ann. Section 59-10-407, the Tax Commission may use any other time or period that will facilitate the collection and payment of the tax by the employer as provided in Utah Code Ann. Section 59-10-406.

B. Employers withholding $1,000 or more per month shall file monthly returns on Form TC-96M (Monthly Income Tax Withholding Report), in accordance with instructions provided by the Tax Commission.

C. The monthly withholding tax return and payment of the tax is due on the last day of the month following the close of the monthly reporting period. Failure to file monthly returns and provide payment of the tax due as prescribed shall result in penalties and interest being assessed in accordance with Utah Code Ann. Sections 59-1-401 and 59-1-402.

D. Annual returns, in a form the Tax Commission prescribes, shall be filed in accordance with Utah Code Ann. Section 59-10-406(3).

R865-9I-18. Taxpayer Records, Statements, and Special Returns Pursuant to Utah Code Ann. Section 59-10-501.

A. Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.

B. Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All such records shall be made available to an authorized agent of the Tax Commission when requested, for review or audit.

R865-9I-19. Returns By Husband and Wife Pursuant to Utah Code Ann. Section 59-10-503.

A. In the year a married person dies, the surviving spouse may file a joint Utah return if a joint federal return was filed except in cases where one spouse was a resident and the other a nonresident. In these cases, separate returns may be required (see Utah Code Ann. Section 59-10-503(b) and Rule R865-9I-6).

R865-9I-20. Returns Made By Fiduciaries and Receivers Pursuant to Utah Code Ann. Section 59-10-504.

A. Returns by fiduciaries and receivers shall be made in accordance with forms and instructions provided by the Tax Commission. The fiduciary of any resident estate or trust or of any nonresident estate or trust having income derived from Utah sources and who is required to make a return for federal income tax purposes shall make and file a corresponding return for state income tax purposes.

1. Each return shall include a listing of the beneficiaries and their distributable shares of the state taxable income.

2. In the case of a nonresident estate or trust, the return shall include detailed information showing how the amount of income derived from or connected with Utah sources was determined.

B. The fiduciary is required to pay the taxes on the income

taxable to the estate or trust. Liability for payment of the tax attaches to the executor or administrator up to his discharge. If the executor or administrator failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax liability, the liability is not extinguished until the return is filed and paid.

C. Liability for the tax also follows the estate itself. If by reason of the distribution of the estate and the discharge of the executor or administrator, it appears that collection of tax cannot be made from the executor or administrator, each legatee or distributee must account for his proportionate share of the tax due and unpaid to the extent of the distributive share received by him.

R865-9I-21. Return By Partnership Pursuant to Utah Code Ann. Section 59-10-507.

A. Every partnership having a resident partner or having any income derived from sources in this state (determined in accordance with Utah Code Ann. Section 59-10-303 and Rule R865-9I-13) shall file a return in accordance with forms and instructions provided by the Tax Commission.

B. If the partnership has income derived from or connected with sources both inside and outside Utah and if any partner was not a resident of Utah, the portion derived from or connected with sources in this state must be determined and shown.

1. They must be determined and shown for each item of the partnership's, and each nonresident partner's, distributive shares of income, credits, deductions, etc., shown on Schedules K and K-1 of the federal return.

2. The Utah portion may be shown alongside the total for each item on the federal schedules K and K-1, or they may be shown on an attachment to the Utah return.

R865-9I-22. Signing of Returns and Other Documents Pursuant to Utah Code Ann. Section 59-10-512.

A. Any return, statement, or other document shall be signed as required by specific provisions of the act or as prescribed by forms or instructions furnished by the Tax Commission.

B. All returns filed with the Tax Commission must be signed by the taxpayer or his duly authorized agent as provided by law. Unsigned returns are not valid returns for income tax purposes and if unsigned, the benefits of proper filing may be denied the taxpayer.

C. Returns may be filed on forms prescribed and furnished by the Tax Commission, or in lieu thereof, on reproduced or facsimile copies, provided that the same information required on the printed form for the same year is provided and the paper used for such substitute return is equal in durability and weight to 20 lb. bond. Paper more brittle or lighter in weight than that specified is not acceptable as a replacement for the regular reporting forms. The use of paper of lesser quality for supporting schedules is permitted, providing the schedules are clear and legible.

R865-9I-23. Extension of Time to File Returns Pursuant to Utah Code Ann. Section 59-10-516.

A. A completed form TC-546, Prepayment of Income Tax, must accompany the prepayment amount required by Section 59-10-516, if the prepayment is not in the form of withholding, payments applied from previous year refunds, or credit carryforwards.

B. Interest shall be charged on any additional tax due shown on the return in accordance with Section 59-1-402. Interest is calculated from the original due date of the return to the date the tax is paid and applies even when an extension of time to file the return exists.

C. Utah residents in military service, stationed outside the United States, shall be granted an extension of time to file to the 15th day of the fourth month after their return to the United States, or their discharge date, whichever is earlier.

R865-9I-24. Timely Mailing Treated As Timely Filing Pursuant to Utah Code Ann. Section 59-10-517.

A. With reference to Section 59-10-517(3)(b), the provisions of that statute that apply to registered mail shall also apply in ordinary circumstances to certified mail.

R865-9I-26. Petition For Redetermination of a Deficiency Pursuant to Utah Code Ann. Section 59-10-533.

A. A petition for redetermination of a deficiency shall be in letter form, and in accordance with the requirements of Utah Code Ann. Section 59-1-501, and effective January 1, 1988 shall conform with the Administrative Procedures Act.

R865-9I-27. Redetermination of Tax Deficiency by Tax Commission Pursuant to Utah Code Ann. Section 59-10-525.

A. If a taxpayer disagrees or has questions about a notice of deficiency, he may arrange to discuss these issues with officials of the Audit Division of the Tax Commission. This must be done prior to filing a petition for determination. The taxpayer may present evidence, legal authority, and argument on an informal basis with a view to reaching a mutual agreement to proper settlement of the case.

B. After a petition for redetermination has been filed, the petitioner shall be granted the opportunity to present evidence, legal authority, and argument in respect to the issues raised by the pleadings. Such presentations shall, under ordinary circumstances, be made initially to designated officials of the Audit Division of the Tax Commission with a view to resolving the case or at least to clearly define the areas of disagreement. If the case is not resolved in this way, and if the petitioner requests, a hearing may be granted before the Tax Commission to present evidence, legal authority and argument regarding the areas of disagreement. After such a hearing, the Tax Commission shall promptly notify the petitioner of its decision as prescribed in Utah Code Ann. Title 59, Chapter 1.

R865-9I-28. Petition For Redetermination of Tax Commission Action On Claim For Refund Pursuant to Utah Code Ann. Section 59-10-533.

A. A petition for redetermination of Tax Commission action on a claim for refund shall be in letter form. In addition to the requirements of Utah Code Ann. Title 59, Chapter 1, the claim shall cite the law or rules upon which petitioner relies as a basis for the claim. It must be supported by documentary evidence to substantiate any facts upon which petitioner relies to support all claims if the burden of proof is upon the taxpayer

as provided in Utah Code Ann. Section 59-10-543.

B. Any response to the Tax Commission's answer to the petition must be filed by mail, in letter form, within 15 days of receipt of the answer.

R865-9I-29. Action of Tax Commission on Redetermination Claim For Refund Pursuant to Utah Code Ann. Section 59-10-535.

A. With reference to Utah Code Ann. Section 59-10-535, if a taxpayer disagrees with Tax Commission action on a claim for refund, he shall be given the opportunity to present evidence, legal authority, and argument in accordance with the same procedures prescribed by Rule R865-9I-27 relative to redetermination of deficiencies.

R865-9I-30. Limitations on Assessment and Collection Pursuant to Utah Code Ann. Section 59-10-536.

A. If a taxpayer elects to defer a determination as to applicability of the presumption that the activity is being engaged in for profit as set forth in I.R.C. Section 183(d), he shall notify the Tax Commission in writing of such election. He must also consent to assessment of tax pertaining to such activity at any time within the five- or seven-year period plus a reasonable additional period.

1. In addition, the taxpayer shall immediately furnish to the Tax Commission a copy of every waiver of the running of the statute of limitations that he may give to the Internal Revenue Service, and he shall at the same time give his consent in writing that the waiver shall also apply to the time allowed for assessment of tax by the Tax Commission.

2. The taxpayer must notify the Tax Commission of any audit actions or determinations made by the Internal Revenue Service with respect to such activity.

R865-9I-32. Confidentiality of Return Information, Penalties, and Exchange of Information With The Internal Revenue Service or Governmental Units Pursuant to Utah Code Ann. Section 59-10-545.

A. The amount of income and other particulars disclosed by a taxpayer on his return or report required under the act is strictly confidential and except in accordance with proper judicial order, or as otherwise provided by law, may not be divulged.

B. A taxpayer, properly identified, may inspect his own return. He may also authorize to the satisfaction of the Tax Commission, an agent to represent him and inspect his returns. Such authorization must be in writing and may be limited or of a continuing nature as specified. A fee may be charged for furnishing copies of returns or reports by the Tax Commission.

C. Officers of the United States Internal Revenue Service, upon being properly identified as such, may be granted permission to inspect the returns or reports on file under this chapter for the purpose of administering the federal tax law. All information, so obtained, must be used in the strictest confidence for tax administration only.

R865-9I-33. Reporting Miscellaneous Income Pursuant to Utah Code Ann. Section 59-10-501.

A. Legible copies of the federal Form 1099 or other special forms for reporting rents, royalties, interest, remuneration, etc., from Utah sources not subject to federal withholding must be open to inspection and gathering of information by authorized representatives of the Tax Commission or submitted to the Tax Commission upon request. These forms must show the name, address, social security number, and other pertinent information pertaining to each taxpayer, resident or nonresident of Utah, the amount and purpose of the distribution clearly shown.

R865-9I-34. Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220 and 59-2-1104 through 59-2-1109.

A. Where the claimant pays property taxes on a mobile home and pays rent on the land on which the home is situated, two computations must be made and the results combined. One computation is made for taxes paid on the mobile home, and the other is made for the rental of the land. The rental may not include charges for any utilities, services, furniture, furnishings or personal appliances furnished by the landlord as a part of the rental agreement.

B. "Property taxes accrued" does not mean that taxes can be accumulated for two or more years and then claimed in one year.

C. Claims for rent paid for taxes will not be allowed in any year in which a claim is made for taxes, except in the case of mobile homes where both taxes and rent are paid.

D. Every claimant shall supply the Tax Commission a statement that the property taxes accrued and used have been or will be paid by him and that there are no delinquent property taxes on the homestead.

E. State welfare assistance is not considered as public funds for the payment of rent, and will not preclude a rebate. However, assistance payments must be included in income.

F. Where housing assistance payments are involved under the Housing and Community Development Act, Title II, Section 8:

1. only that portion of the rent paid by the tenant may be claimed under the terms of the Circuit Breaker Act; and

2. that portion of the rent paid by the federal government to the landlord will not be considered as part of the household income since it is not subject to a claim for rebate.

G. Persons claiming exemption under the provision of the laws for indigents, veterans or blind persons are not precluded from claiming a refund or rebate under Utah Code Ann. Sections 59-2-1204, 59-2-1205 and 59-2-1208. Exemption refunds and rebates are subject to the limitations imposed by Utah Code Ann. Title 59, Chapter 2.

R865-9I-37. Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 9-2-401 through 9-2-414.

A. Definitions:

1. "Qualifying investment" means an investment in plant, equipment, or other depreciable property that is newly purchased or constructed.

2. "Nonretail capacity" means any position except those involved in selling directly to the public.

3. "Transfer" pursuant to Section 9-2-411, means the

relocation of assets and operations of a business, including personnel, plant, property, and equipment.

4. "Individuals who, at the time of employment" pursuant to Section 9-2-412, means individuals who, prior to being employed by the manufacturing business claiming the tax credit, were residents of the enterprise zone.

B. Qualifying investments must meet the following:

1. The plant, equipment, or other depreciable property for which the credit is being taken must be located within the boundaries of the enterprise zone.

2. An investment in plant, equipment, or other depreciable property does not qualify for the investment tax credit until the manufacturing concern is operational within the enterprise zone.

3. A purchase of an already existing manufacturing concern located in an enterprise zone does not qualify as an investment in plant, equipment, or other depreciable property.

4. A qualifying investment may include:

a) The investment in storage facilities to store manufactured goods, raw materials or other items used in the manufacturing process if the storage facility is located in the same enterprise zone as the manufacturing business for which the storage facility is being used.

b) The investment in the retail portion of a primarily manufacturing business if the retail portion is located within the same enterprise zone as the manufacturing portion for which the qualifying investment is being made.

C. The replacement of existing assets does not qualify for the investment tax credit.

D. A business existing in an enterprise zone on the date of its designation shall use the higher of the following in determining its base number of employees to be used in calculating new full-time positions as indicated in Section 9-2-413:

1. The number of employees shall be calculated based on the average number of employees reported to the Department of Employment Security for the four quarters prior to the county's designation as an enterprise zone; or

2. The number of full-time positions on the date of the county's designation as an enterprise zone.

E. Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

F. Employees must be employed for six months prior to December 31, 1994 to be eligible for the tax credit allowed in Section 9-2-413.

G. If a county that has been designated an enterprise zone loses that designation prior to the expiration of the period for which it was so designated, no tax credits other than carryforward tax credits earned in a prior year in which the county was a designated enterprise zone will be allowed to any business in that county.

H. Enterprise zone credits claimed on returns with an original due date prior to July 1, 1993, may be carried forward for five years. Enterprise zone credits claimed on returns with an original due date on or after July 1, 1993, may be carried forward for three years.

R865-9I-38. Pensions and Annuities Pursuant to Utah Code Ann. Section 59-10-114.

A. Amounts received by taxpayers from pension or annuity plans described in Section 59-10-114 are not retirement income for purposes of that section if:

1. The amounts received are subject to the penalty or additional tax imposed by I.R.C. sections 72(q) and (t); or

2. The amounts are not subject to the penalty or additional taxes imposed by I.R.C. Sections 72(q) and (t) because they are a return of previously taxed contributions; or

3. The amounts received are due to termination of employment before reaching a normal retirement age as established under the qualifying plan.

R865-9I-39. Subtraction from Federal Taxable Income for a Handicapped Child or Adult Pursuant to Utah Code Ann. Section 59-10-114.

A. The subtraction from income for handicapped children and handicapped adults allowed under Section 59-10-114 must be accompanied, for each year claimed, by the Disabled Exemption Verification, form TC-40D.

R865-9I-41. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-10-108.5.

A. Definitions

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-10-108.5 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the $10,000 expenditure threshold required by Section 59-10-108.5 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the

Secretary of the Interior's standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah individual income tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah individual income tax due in a tax year shall be carried forward to the extent provided by Section 59-10-108.5.

H. Carryforward historic preservation tax credits shall be applied against Utah individual income tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-9I-42. Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6- 102, 59-13-202, and Title 59, Chapter 10.

A. Taxpayers shall deduct credits authorized by Sections 9-2- 413, 59-6-102, 59-13-202, and Title 59, Chapter 10 against Utah individual income tax due in the following order:

1. nonrefundable credits;

2. nonrefundable credits with a carryforward;

3. refundable credits.

R865-9I-44. Compensation Received by Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118.

A. The Utah source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

B. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

C. Definitions.

1. "Professional athletic team" includes any professional baseball, basketball, football, soccer, or hockey team.

2. "Member of a professional athletic team" shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes coaches, managers, and trainers.

3. "Duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

a) Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in 3., for example, participation in instructional leagues, the Pro Bowl, or other promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

b) Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

c) Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

d) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

e) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

4. "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:

a) from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

b) during the taxable year on a date that does not fall within the period in 4.a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

5. "Total compensation" includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

a) Total compensation shall not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

b) For purposes of this rule, "bonuses" subject to the allocation procedures described in A. are:

(1) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(2) bonuses paid for signing a contract, unless all of the following conditions are met:

(a) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(b) the signing bonus is payable separately from the salary and any other compensation; and

c) the signing bonus is nonrefundable.

D. The purpose of this rule is to apportion to the state, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the provisions of this rule will result in a fair and equitable apportionment of that compensation. Where it is demonstrated that the method provided under this rule does not fairly and equitably apportion that compensation, the commission may require the member of a professional athletic team to apportion that compensation under a method the commission prescribes, as long as the prescribed method results in a fair and equitable apportionment.

1. If a nonresident member of a professional athletic team demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, that member may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team's nonresident personal income tax return for the state.

E. Nonresident professional athletes shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

F. Professional athletic teams shall file a composite return, on a form prescribed by the commission, on behalf of nonresident professional athletes that meet all of the following conditions.

1. Nonresident professional athletes included on the return may not have other income from Utah sources. Resident professional athletes may not be included on a composite return.

2. A schedule shall be included with the return, listing all nonresident professional athletes included in the composite filing. The schedule shall list all of the following information for each nonresident professional athlete:

a) name;

b) address;

c) social security number;

d) Utah income attributable to that nonresident professional athlete.

3. Nonresident professional athletes that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Non or Part-year Resident Individual Income Tax Return.

4. Participating team members must acknowledge through their election that the composite return constitutes an irrevocable filing and that they may not file an individual income tax return in the taxing state for that year.

G. The tax due on the composite return shall be computed as follows.

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident professional athletes included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.

H. The professional athletic team's federal identification number shall be used on the composite form in place of a social security number.

I. This rule has retrospective application to January 1, 1995.

R865-9I-46. Medical Savings Account Tax Deduction Pursuant to Utah Code Ann. Sections 31A-32a-106 and 59-10-114.

A. Account administrators required to withhold penalties from withdrawals pursuant to Section 31A-32a-105 shall hold those penalties in trust for the state and shall submit those withheld penalties to the commission along with form TC-97M, Utah Medical Savings Account Reconciliation.

B. In addition to the requirements of A., account administrators shall file a form TC- 675M, Statement of Withholding for Medical Savings Account, with the commission, for each account holder. The TC-675M shall contain the following information for the calendar year:

1. the beginning balance in the account;

2. the amount contributed to the account;

3. the account's earnings;

4. distributions for qualified medical expenses;

5. distributions for non-medical expenses not subject to penalty;

6. distributions for non-medical expenses subject to penalty;

7. the amount of penalty required to be withheld and remitted to the state;

8. the account administrator's administrative fee charged to the account; and

9. the ending balance in the account.

C. The account administrator shall file forms TC-97M and TC-675M with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The account administrator shall provide each account holder with a copy of the form TC-675M on or before January 31 of the year following the calendar year on which the TC-675M is based.

E. The account administrator shall maintain original records supporting the amounts listed on the TC-675M for the current year filing and the three previous year filings.

F. Account holders must attach a copy of the TC-675M to their state tax return to qualify for the deduction allowed under Section 59-10-114.

R865-9I-47. Withholding and Payment of Income Tax for Members of the Armed Services Receiving Combat Pay Pursuant to Utah Code Ann. Sections 59-10-408 and 59-10-522.

A. Income excluded from federal adjusted gross income as combat pay shall be exempt from the withholding requirements of Sections 59-10-401 through 59-10-407.

B. Utah residents receiving combat pay qualify for an extension of time to pay income taxes for a period not to exceed the extension for filing returns provided in Tax Commission rule R865-9I-23(C).

R865-9I-48. Adoption Expenses Deduction Pursuant to Utah

Code Ann. Section 59-10-114.

A. For purposes of the deduction for adoption expenses under Section 59-10-114, adoption expenses include:

1. medical expenses associated with prenatal care, childbirth, and neonatal care;

2. fees paid to reimburse the state under Section 35A-3-308;

3. fees paid to an attorney or placement service for arranging the adoption;

4. all actual travel costs incurred exclusively for the purpose of completing adoption arrangements; and

5. living expenses of the birth mother if paid by the adoptive parents as part of their adoption expenses and if in conformance with Section 76-7-203.

B. Adoption expenses do not include:

1. food, clothing, or other routine expenses associated with the child's care, other than necessary medical expenses, that arise before the adoption is final;

2. foster care expenses incurred prior to the application for adoption; or

3. legal expenses arising from custody actions subsequent to the finalization of the adoption.

C. Qualified adoption expenses may be deducted regardless of whether the adoption process is terminated.

D. The income tax deduction under Section 59-10-114 applies to the actual qualified adoption expenses of the birth mother, the legal guardian of the birth mother or another individual acting on behalf of the birth mother, or the adoptive parents.

E. Qualified adoption expenses must be deducted in the tax year in which the expenses are paid by the party incurring the expenses.

F. Reimbursed adoption expenses for which a taxpayer has taken the state income tax deduction, must be added to the taxpayer's gross income in the tax year in which the expenses are reimbursed.

R865-9I-49. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112 and 59-10-114.

A. "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

B. The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust participant. The TC-675H shall contain the following information for the calendar year:

1. the amount contributed to the trust by the participant;

2. the income earned on the participant's contributions to the trust; and

3. the amount refunded to the participant pursuant to Section 53B-8a-109.

C. The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The trustee of the trust shall provide each trust participant with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

E. The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

F. Trust participants must attach a copy of the TC-675H to their state tax return to qualify for the deduction allowed under Section 59-10-114.

KEY: historic preservation, income tax, tax returns, enterprise zones
September 5, 2001
Notice of Continuation May 22, 1997

9-2-401 through 9-2-414
53B-8a-112
59-2-1201 through 59-2-1220
59-2-1104 through 59-2-1109
59-6-102
59-10
59-10-103
59-10-106
59-10-108 through 59-10-122
59-10-124
59-10-127
59-10-128
59-10-129
59-10-130
59-10-207
59-10-210
59-10-303
59-10-401 through 59-10-403
59-10-406 through 59-10-408
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59-10-504
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59-10-533
59-10-535
59-10-536
59-10-545
59-10-602
59-10-603
59-13-202
59-13-302

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Title 59, Chapter 12.

A. The sales tax is imposed upon sales of tangible personal property made within the state of Utah, regardless of where such property is intended to be used, and on the amount paid or charged for all services for repairs and renovations of tangible personal property or for installation of tangible personal property rendered in connection with other tangible personal property.

B. The use tax is imposed upon the use, storage or other consumption of tangible personal property, and upon the amount paid or charged for the services for repairs or renovations of tangible personal property or installation of tangible personal property in connection with other tangible personal property, if the tangible personal property is for use, storage, or consumption in Utah; and, ordinarily, if the transaction does not take place within the state of Utah.

C. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

D. The distinguishing factor in determining which tax is applicable is normally the place where the sale or service takes place. If the sale is made in Utah, the sales tax applies. If the sale is made elsewhere, the use tax applies.

R865-19S-2. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. An invoice or receipt issued by a vendor shall show the sales tax collected as a separate item on the invoice or receipt.

B. If an invoice or receipt issued by a vendor does not show the sales tax collected as required in A., sales tax will be assessed on the vendor based on the amount of the invoice or receipt.

C. A vendor that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the vendor collected the excess or remit the excess to the Commission.

1. A vendor may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.

2. A vendor may not offset an underpayment of tax on the vendor's purchases against an excess of tax collected.

R865-19S-6. Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The vendor shall collect sales or use tax at the rate set by law. Rule R865-19S-30 defines sales price.

B. The Tax Commission furnishes tables that may be used to determine the proper amount of tax on each transaction. These tables reflect the appropriate amount, including applicable local taxes, for the various taxing jurisdictions.

R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.

A. A separate license must be obtained for each place of business, but where more than one place of business is operated by the same person, one application may be filed giving the required information about each place of business. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. Any person required to collect sales tax must notify the Tax Commission of any change of address or character of business, or if the business is discontinued.

R865-19S-8. Bonds and Securities Pursuant to Utah Code Ann. Section 59-12-107.

A. Any business not in compliance with the sales tax collection and remittance procedures outlined in the Sales and Use Tax Act must post security with the Tax Commission sufficient in amount to insure the payment of whatever liability may be involved. Noncompliance with the Sales and Use Tax Act includes:

1. failure to file returns,
2. failure to make payments,
3. filing of returns that are improper,
4. payment of sales tax with a check that is not honored.

B. The Tax Commission may accept a valid corporate surety bond, United States treasury bond, cash, or such other negotiable security as it deems adequate.

C. The bond will be released only upon written request and after a careful review of all circumstances or upon cessation of business if no liability exists.

R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Section 59-12-107.

A. Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due. Where a vendor operates two or more places of business, he shall file one return, accompanied by Form TC-71A, Schedule A--Allocation of Local Sales and Use Taxes, covering the operations of all places of business operated under the same account number. Each return must be signed by the taxpayer or an authorized agent.

B. Returns, accompanied by the tax due, must be filed with the Tax Commission. If the due date falls on a Saturday, Sunday, or legal holiday, returns will be considered timely filed if received on the next business day. If returns are transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed.

C. Extensions of time for filing of returns and paying the tax are granted only for cause and upon written application received prior to the time the return is due. No such extension shall be made for more than 90 days.

D. Sales and use tax returns shall be filed and paid quarterly beginning with the first calendar quarter of business,

or portion thereof, with the following exceptions:

1. New businesses that expect annual sales and use tax liability less than $1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

2. Businesses currently assigned a quarterly filing status, in good standing and reporting less than $1,000 in tax for the preceding calendar year may be changed to annual filing status.

The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

3. Businesses assigned an annual filing status reporting in excess of $1,000 for a calendar year, will be changed to quarterly filing status. The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

4. Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of $1,000 or as a result of delinquent payment history.

5. Based upon delinquent sales tax amounts or upon review by the Commission, businesses may be required to make daily, weekly, or monthly deposits of sales tax amounts if deemed necessary to ensure timely remittance of the sales tax.

E. The Tax Commission may require licensed vehicle dealers who are late or delinquent in reporting or remitting sales tax to pay sales tax on future vehicle sales at the time of application for title or registration of the vehicle. Delinquent dealers shall continue to pay at the time of registration until the Tax Commission determines that all accounts are current and steps have been taken to ensure future compliance. The dealer must retain Tax Commission receipts for payment of taxes, and may adjust the quarterly tax returns to compensate for payments made at the time of application for title or registration. If the Tax Commission deems it necessary, it may require delinquent dealers to make payments with a cashier's check, a money order, or a similar guaranteed form of payment.

R865-19S-13. Confidential Nature of Returns Pursuant to Utah Code Ann. Section 59-12-109.

A. The returns filed are confidential and the information contained therein will not be divulged by the Tax Commission, its agents, clerks, or employees except in accordance with judicial order or upon proper application of a federal, state, or local agency. The returns will not be produced in any court proceeding except where such proceeding directly involves provisions of the sales tax act.

B. However, any person or his duly authorized representative who files returns under this act may obtain copies of the same upon proper application and presentation of proper picture identification.

R865-19S-16. Failure to Remit Excess Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The amount paid by any vendor to the Tax Commission with each return is the greater of:

1. the actual tax collections for the reporting period, or

2. the amount computed at the rates imposed by law against the total taxable sales for that period.

B. Space is available on the return forms for inserting figures and the words "excess collections," if needed.

R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Justified adjustments may be made and credit allowed for cash discounts, returned goods, bad debts, and repossessions that result from sales upon which the tax has been reported and paid in full by retailers to the Tax Commission.

1. Adjustments and credits will be allowed only if the retailer has not reimbursed himself in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off, or the repossession occurs.

3. Any refund or credit given to the purchaser must include the related sales tax.

4. Sales tax credits for bad debts are allowable only on accounts determined to be worthless and actually charged off for income tax purposes. Recoveries made on bad debts and repossessions for which credit has been claimed must be reported and the tax paid.

5. Sales tax credit for repossessions is allowable on the basis of the original amount subject to tax, less down payment. This amount is multiplied by the ratio of the number of monthly payments not made, divided by the total number of monthly payments required by the contract.

a) For example: the credit allowed on a taxable $30,000 car sale with a $5,000 down payment financed on a 60-month contract and repossessed after 20 full payments were made would be $16,667 as computed and shown below. The number of unpaid full payments is determined by dividing the total received on the contract by the monthly payment amount.

TABLE

Example:		
(1)	Original amount subject to tax	$30,000
(2)	Down payment	(5,000)
(3)	Balance of taxable base financed	25,000
(4)	Number of full payments unpaid at the time of repossession	40
(5)	Total contract period (no. of months)	60

Line 4 divided by line 5 times taxable base financed equals repossession credit

(40/60) x $25,000 = $16,667

b) In cases where a contract assignment creates a partial (part of the loan amount) recourse obligation to the seller, any repossession credit must be calculated in the same manner as shown above.

c) The credit for repossession shall be reported on the dealer's or vendor's sales tax return with an attached schedule showing computations and appropriate adjustments for any tax rate changes between the date of sale and the date of repossession.

6. Credit for tax on repossessions is allowed only to the

selling dealer or vendor.

a) This does not preclude arrangements between the dealer or vendor and third party financial institutions wherein sales tax credits for repossessions by financial institutions may be taken by the dealer or vendor who will in turn reimburse the financial institution.

b) In the event the applicable vehicle dealer is no longer in business, and there are no outstanding delinquent taxes, the third party financial institution may apply directly to the Tax Commission for a refund of the tax in the amount that would have been credited to the dealer.

D. Adjustments in sales price, such as allowable discounts or rebates, cannot be anticipated. The tax must be based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the credit is claimed, the tax credit must be determined and deducted rather than deducting the sales price adjustments.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

R865-19S-22. Sales and Use Tax Records Pursuant to Utah Code Ann. Section 59-12-111.

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall:

1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in connection with tangible personal property made in this state, irrespective of whether the retailer regards the receipts to be taxable or nontaxable;

2. show all deductions allowed by law and claimed in filing returns;

3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and

4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

B. Records may be microfilmed or microfiched. However, microfilm reproductions of general books of account--such as cash books, journals, voucher registers, ledgers, and like documents--are not acceptable as original records. Where microfilm or microfiche reproductions of supporting records are maintained--such as sales invoices, purchase invoices, credit memoranda and like documents--the following conditions must be met:

1. appropriate facilities must be provided for preservation of the films or fiche for the periods required and open to examination,

2. microfilm rolls and microfiche must be systematically filed, indexed, cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included,

3. upon request of the Tax Commission, the taxpayer shall provide transcriptions of any information contained on microfilm or microfiche which may be required for verification of tax liability,

4. proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records,

5. a posting reference must appear on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in such order so as to relate to exempt transactions claimed.

C. Any automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

1. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

2. A general ledger with source references should be prepared to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be prepared periodically.

3. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Tax Commission upon request. The system should be so designed that supporting documents--such as sales invoices, purchase invoices, credit memoranda, and like documents--are readily available.

4. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(a) the application being performed;

(b) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and

(c) the controls used to insure accurate and reliable processing and important changes, together with their effective dates, in order to preserve an accurate chronological record.

D. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three years.

E. All of the foregoing records shall be made available for examination on request by the Tax Commission or its authorized representatives.

F. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the

Tax Commission may:

1. Prohibit the taxpayer from introducing in any protest or refund claim proceeding those microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

2. Dismiss any protest or refund claim proceeding in which the taxpayer bases its claim upon any microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

3. Enter such other order necessary to obtain compliance with this rule in the future.

4. Revoke taxpayer's license upon evidence of continued failure to comply with the requirements of this rule.

R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales. Records shall include:

1. sales invoices showing the name and identity of the customer; and

2. exemption certificates for exempt sales of tangible personal property or services if the exemption category is shown on the exemption certificate forms.

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A vendor may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

E. The burden of proving that a sale is for resale or otherwise exempt is upon the vendor. If any agent of the Tax Commission requests the vendor to produce a valid exemption certificate or other similar acceptable evidence to support the vendor's claim that a sale is for resale or otherwise exempt, and the vendor is unable to comply, the sale will be considered taxable and the tax shall be payable by the vendor.

R865-19S-25. Sale of Business Pursuant to Utah Code Ann. Section 59-12-112.

A. Every sales tax license holder who discontinues business, is required to notify the Tax Commission immediately and return the sales tax license for cancellation.

B. Every person discontinuing business shall retain records for a period of three years unless a release from such provision is obtained from the Tax Commission.

R865-19S-27. Retail Sales Defined Pursuant to Utah Code Ann. Sections 59-12-102(8)(a) and 59-12-103(1)(g).

A. The term retail sale has a broader meaning than the sale of tangible personal property. It includes any transfers, exchanges, or barter whether conditional or for a consideration by a person doing business in such commodity or service, either as a regularly organized principal endeavor or as an adjunct thereto. The price of the service or tangible personal property, the quantity sold, or the extent of the clientele are not factors which determine whether or not it is a retail sale.

B. Retail sale also includes certain leases and rentals of tangible personal property as defined in Rule R865-19S-32, accommodations as defined in Rule R865-19S-79, services performed on tangible personal property as defined in Rules R865-19S-51 and R865-19S-78, services that are part of a sale or repair, admissions as defined in Rules R865-19S-33 and R865-19S-34, sales of meals as defined in Rules R865-19S-61 and R865-19S-62, and sales of certain public utility services.

C. A particular retail sale or portion of the selling price may not be subject to a sales or use tax. The status of the exemption is governed by the circumstances in each case. See other rules for specific and general exemption definitions, Rule R865-19S-30 for definition of sales price and Rule R865-19S-72 covering trade-ins.

R865-19S-28. Retailer Defined Pursuant to Utah Code Ann. Section 59-12-102.

A. "Retailer" means vendors operating within this state directly, or indirectly through agents or representatives, if the vendor:

1. has or utilizes an office, distribution house, sales house, warehouse, service enterprise, or other place of business,

2. maintains a stock of goods in Utah,

3. regularly solicits orders whether or not such orders are accepted in this state, unless the activity in this state consists solely of advertising or solicitation by direct mail,

4. regularly engages in the delivery of property in this state other than by common carrier or United States mail, or

5. regularly engages in any activity in connection with the leasing or servicing of property located within this state.

B. A person may be a retailer within the meaning of the act even though the sale of tangible personal property is incidental to his general business. For example, a contractor may operate a salvage business and be a retailer within the meaning of the act.

R865-19S-29. Wholesale Sale Defined Pursuant to Utah Code Ann. Section 59-12-102.

A. "Wholesale sale" means any sale by a wholesaler, retailer, or any other person, of tangible personal property or services to a retailer, jobber, dealer, or another wholesaler for resale.

1. All sales of tangible personal property or services which enter into and become an integral or component part of tangible personal property or product which is further manufactured or compounded for sale, or the container or the shipping case thereof, are wholesale sales.

2. All sales of poultry, dairy, or other livestock feed and the components thereof and all seeds and seedlings are deemed to be wholesale sales where the eggs, milk, meat, or other

livestock products, plants, or plant products are produced for resale.

3. Sprays and insecticides used in the control of insect pests, diseases, and weeds for the commercial production of fruit, vegetables, feeds, seeds, and animal products shall be wholesale sales. Also baling ties and twine for baling hay and straw and fuel sold to farmers and agriculture producers for use in heating orchards and providing power in off-highway type farm machinery shall be wholesale sales.

B. Tangible personal property or services which are purchased by a manufacturer or compounder which do not become and remain an integral part of the article being manufactured or compounded are subject to sales or use tax.

1. For example, sales to a knitting factory of machinery, lubricating oil, pattern paper, office supplies and equipment, laundry service, and repair labor are for consumption and are taxable. These services and tangible personal property do not become component parts of the manufactured products. On the other hand, sales of wool, thread, buttons, linings, and yarns, to such a manufacturer that do become component parts of the products manufactured are not taxable.

C. The price of tangible personal property or services sold or the quantity sold are not factors which determine whether or not the sale is a wholesale sale.

D. All vendors who make wholesale sales are required to obtain an exemption certificate from the purchaser as evidence of the nature of the sale, as required by Rule R865-19S-23.

R865-19S-30. Purchase Price or Sales Price Defined Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-104.

A. Fair market value for purposes of Sections 59-12-104(14) and 59-12-104(19) shall be determined in accordance with the provisions of Tax Commission Rule R884-24P-46.

B. "Purchase price" and "sales price" may be used interchangeably.

C. For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

D. For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;

2. the purchase price of the vehicle;

3. the value allowed for the trade-in vehicle;

4. the net difference between the vehicle traded and the vehicle purchased;

5. the signature of the seller; and

6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.

A. The lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental.

B. When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement. The tax applies when situs of the property is in Utah or if the lessee takes possession in Utah. However, if the leased property is used exclusively outside Utah and an affidavit is furnished to the lessor to this effect, the tax does not apply. Examples of taxable leases include neon signs and custom made signs on the premises of the lessee, automobiles, and construction equipment leased for use in Utah.

C. Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

D. Persons who furnish an operator with the rental equipment and charge for the use of the equipment and personnel are regarded as the consumers of the property leased or rented. An example of this type of rental is the furnishing of a crane and its operating personnel to a building erector. Sales or use tax then applies to the purchase of the equipment by the lessor rather than to the rental revenue.

E. Rentals to be applied on a future sale or purchase are subject to sales or use tax.

F. A lessee may, at its option, treat a conditional sale lease as either a sale or lease for sales or use tax purposes.

A conditional sale lease is a lease in which:

1. the consideration the lessee is to pay the lessor for the right to possession and use of the property is an obligation for the term of the lease not subject to termination by the lessee, and

2. the total consideration to be paid by the lessee is fixed at the time the lease is executed and cannot be modified by use, condition, or market value, and either:

a. the lessee is bound to become the owner of the property; or

b. the lessee has an option to become the owner of the property for no additional consideration or nominal additional consideration upon compliance with the lease agreement. Nominal consideration in this sense means ten percent or less of the original lease amount.

G. If the lessee treats a conditional sale lease as a sale, and if the lessor is also the vendor of the property, the sales price for sales tax purposes must be at least equal to the average sales price of similar property.

H. If the lessee treats a conditional sale lease as a sale, the sales tax must be collected by the lessor on the full purchase price of the property at the time of the purchase.

R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to use a table at a night club, hotel, or roof garden whether such charge is designated as a cover charge, minimum charge, or any such similar charge.

1. This applies whether the charge made for the use of the seat, table, or similar accommodation is combined with an admission charge to form a single charge, or is separate and distinct from an admission charge, or is the sole charge.

B. "Annual membership dues paid to a private organization" includes only those dues paid by members who, directly or indirectly, establish the level of the dues.

C. "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

D. If the original admission charge carries the right to remain in a place, or to use a seat or table, or other similar accommodation for a limited time only, and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the law. Where a person or organization acquires the sole right to use any place or the right to dispose of all of the admissions to any place for one or more occasions, the amount paid is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place and if the person or organization in turn sells admissions, sales tax applies to amounts paid for such admissions.

E. Annual membership dues may be paid in installments during the year.

F. Amounts paid for the following activities are not admissions or user fees:

1. lessons, public or private;

2. sign up for amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, the primary purpose of which, as stated in the corporation's or organization's articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

3. sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

G. If amounts charged for activities listed in F. are billed along with admissions or user fees, the amounts not subject to the sales tax must be listed separately on the invoice in order to remain untaxed.

R865-19S-34. Admission to Places of Amusement Pursuant to Utah Code Ann. Section 59-12-103.

A. The phrase "place of amusement, entertainment, or recreation" is broad in meaning but conveys the basic idea of a definite location.

B. The amount paid for admission to such a place is subject to the tax, even though such charge includes the right of the purchaser to participate in some activity within the place. For example, the sale of a ticket for a ride upon a mechanical or self-operated device is an admission to a place of amusement.

C. Charges for admissions to swimming pools, skating rinks, and other places of amusement are subject to tax. Charges for towel rentals, swimming suit rentals, skate rentals, etc., are also subject to tax. Locker rental fees are subject to sales tax if the lockers are tangible personal property.

R865-19S-35. Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. "Residential use" is as defined in Section 59-12-102(7), and includes use in nursing homes or other similar establishments that serve as the permanent residence for a majority of the patients because they are unable to live independently.

B. Explosives or material used as active ingredients in explosive devices are not fuels.

C. If a firm has activities that are commercial and industrial and all fuels are furnished at given locations through single meters, the predominant use of the fuels shall determine taxable status of the fuels.

D. Fuel oil and other fuels must be used in a combustion process in order to qualify for the exemption from sales tax for industrial use of fuels pursuant to Section 59-12-104.

R865-19S-37. Exempt Sales of Commercials, Audio Tapes, and Video Tapes by or to Motion Pictures Exhibitors and Distributors Pursuant to Utah Code Ann. Section 59-12-104.

A. The purpose of this rule is to clarify the sales tax exemption for sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster.

B. Definitions.

1. "Commercials," "audio tapes," and "video tapes" mean tapes, films, or discs used by television or radio stations in regular broadcasting activities but do not include blank tapes purchased for newscasts or other similar uses by radio and television stations.

2. "Motion picture exhibitor" means any person engaged in the business of operating a theater or establishment in which motion pictures are regularly exhibited to the public for a charge.

3. "Distributor" means any person who purchases or sells motion picture films and video tapes that are used by a commercial television broadcaster or a motion picture exhibitor.

C. The sales tax exemption will be administered according to the provisions of Section 59-12-104 and this rule.

R865-19S-38. Isolated and Occasional Sales Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made by officers of a court, pursuant to court orders, are occasional sales, with the exception of sales made by trustees, receivers, assignees and the like, in connection with the liquidation or conduct of a regularly established place of business. Examples of casual sales are those made by sheriffs in foreclosing proceedings and sales of confiscated property.

B. If a sale is an integral part of a business whose primary function is not the sale of tangible personal property, then such

sale is not isolated or occasional. For example, the sale of repossessed radios, refrigerators, etc., by a finance company is not isolated or occasional.

C. Sales of vehicles required to be titled or registered under the laws of this state are not isolated or occasional sales, except that any transfer of a vehicle in a business reorganization where the ownership of the transferee organization is substantially the same as the ownership of the transferor organization shall be considered an isolated or occasional sale.

D. Isolated or occasional sales made by persons not regularly engaged in business are not subject to the tax. The word "business" refers to an enterprise engaged in selling tangible personal property or taxable services notwithstanding the fact that the sales may be few or infrequent. Any sale of an entire business to a single buyer is an isolated or occasional sale and no tax applies to the sale of any assets made part of such a sale (with the exception of vehicles subject to registration).

E. The sale of used fixtures, machinery, and equipment items is not an exempt occasional sale if the sale is one of a series of sales sufficient in number, amount, and character to indicate the seller deals in the sale of such items.

F. Sales of items at public auctions do not qualify as exempt isolated or occasional sales.

G. Wholesalers, manufacturers, and processors who primarily sell at other than retail are not making isolated or occasional sales when they sell such tangible personal property for use or consumption.

R865-19S-40. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.

A. When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged.

R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.

A. Sales to the United States government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax.

B. If the United States government pays for merchandise or services with funds held in trust for nonexempt individuals or organizations, sales tax must be charged.

C. Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

D. Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-42. Sales to The State of Utah and Its Subdivisions Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made to the state of Utah, its departments and institutions, or to its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts are exempt from tax if the purchase is for use in the exercise of an essential governmental function.

B. A sale is considered made to the state, its departments and institutions, or to its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with his own funds and is reimbursed by the state or local entity, that sale is not made to the state or local entity and does not qualify for the exemption.

C. Vendors making exempt sales to the state, its departments and institutions, or to its political subdivisions are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-43. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

B. Religious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.

1. The definition of the phrase "unrelated trades or businesses" shall be the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993), which is adopted and incorporated by reference.

C. Every institution claiming exemption from sales tax under this rule must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination. Vendors making sales to institutions exempt from sales tax are subject to the requirements of Rule R865-19S-23.

R865-19S-44. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.

B. Before a sale qualifies as a sale made in interstate commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;

2. such movement must be an essential and not an incidental part of the sale;

3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary

line to the buyer;

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

R865-19S-45. Auctioneers, Consignees, Bailees, Etc. Pursuant to Utah Code Ann. Section 59-12-102.

A. Every auctioneer, consignee, bailee, factor, etc., entrusted with possession of any bill of lading, custom house permits, warehousemen's receipts, or other documents of title for delivery of any tangible personal property, or entrusted with possession of any of such personal property for the purpose of sale, is deemed to be the retailer thereof, and is required to collect sales tax, file a return, and remit the tax. The same rule applies to lien holders such as storage men, pawnbrokers, mechanics, and artisans.

R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales of containers, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;

2. sold to a manufacturer, processor, wholesaler, or retailer for use as a returnable container that is ordinarily returned to and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or

3. sold for internal transportation or accounting control purposes.

B. Returnable containers may include water bottles, carboys, drums, beer kegs for draft beer, dairy product containers, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar containers that are ultimately destroyed or retained by the final user or consumer are not considered returnable and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in containers, for example soft drinks, is assessed a deposit or other container charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

R865-19S-49. Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104.

A. The purchase of feed, medicine, and veterinary supplies by a farmer or other agricultural producer qualify for the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations if the feed, medicine, or veterinary supplies are used:

1. to produce or care for agricultural products that are for sale;

2. to feed or care for working dogs and working horses in agricultural use;

3. to feed or care for animals that are marketed.

B. Fur-bearing animals that are kept for breeding or for their products are agricultural products.

C. The sales and use tax exemption for sales of tangible personal property used or consumed primarily and directly in farming operations applies only to commercial farming operations, as evidenced by the filing of a federal Farm Income and Expenses Statement (Schedule F) or other similar evidence that the farm is operated as a commercial venture.

D. A vendor making sales to a farmer or other agricultural producer is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

E. Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold by a producer during the harvest season.

R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Flowers, trees, bouquets, plants, and other similar items of tangible personal property are agricultural products and are, therefore, subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.

B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:

1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;

2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;

3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.

R865-19S-51. Fabrication and Installation Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. The amount charged for fabrication or installation which is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

C. Charges for labor to install personal property in connection with other personal property are taxable (see Rule R865-19S-78) whether material is furnished by seller or not.

D. Labor to install tangible personal property to real

property is exempt, whether the personal property becomes part of the realty or not. See Rule R865-19S-58, dealing with improvements to or construction of real property, to determine the applicable tax on personal property which becomes a part of real property.

E. Tangible personal property which is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, and installation charges are exempt if separately stated. If the retailer does not segregate the selling price and installation charges, the sales tax applies to the entire sales price, including installation charges.

F. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.

R865-19S-52. Federal, State and Local Taxes Pursuant to Utah Code Ann. Section 59-12-102.

A. Federal excise tax involved in a transaction which is subject to sales or use tax is exempt from sales and use tax provided the federal tax is separately stated on the invoice or sales ticket and collected from the purchaser.

B. State and local taxes are taxable as a part of the sales price of an article if the tax is levied on the manufacturer or the seller.

R865-19S-53. Sale by Finance Companies Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales of tangible personal property acquired by repossession or foreclosure are subject to tax. Persons making such sales must secure a license and collect and remit tax on the sales made.

R865-19S-54. Governmental Exemption Pursuant to Utah Code Ann. Section 59-12-104.

A. Tax does not apply to sales to the state of Utah, or to any political subdivision of the state, where such property is for use in the exercise of an essential governmental function. Also, certain sales are not taxed because of federal law or the United States Constitution.

B. Sales to the following state and federal agencies, institutions, and instrumentalities are exempt:

1. federal agencies and instrumentalities
2. state institutions and departments
3. counties
4. municipalities
5. school districts, public schools
6. special taxing districts
7. federal land banks
8. federal reserve banks
9. activity funds within the armed services
10. post exchanges
11. Federally chartered credit unions

C. The following are taxable:

1. national banks
2. federal building and loan associations
3. joint stock land banks
4. state banks (whether or not members of the Federal Reserve System)
5. state building and loan associations
6. private irrigation companies
7. rural electrification projects
8. sales to officers or employees of exempt instrumentalities

D. No sales tax immunity exists solely by virtue of the fact that the sale was made on federal property.

E. Sales made by governmental units are subject to sales tax.

R865-19S-55. Hospitals Pursuant to Utah Code Ann. Section 59-12-104.

A. All retail sales (other than prescribed medicines as noted in Rule R865-19S-37) made to hospitals are taxable unless the Tax Commission has furnished the hospital an opinion that it qualifies as a religious or charitable institution, and such hospital furnishes its vendors a purchase order or a check in accordance with instructions set forth in Rule R865-19S-23.

R865-19S-56. Sales by Employers to Employees Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales to employees are subject to tax on the amount charged for goods and taxable services. If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise. Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away.

R865-19S-57. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable.

B. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed.

R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

1. "Construction materials" include items of tangible personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.

2. Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, built-in appliances, or other items that are appurtenant to or

incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

B. The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

1. The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

2. Except as otherwise provided in B.4, the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

3. Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

4. Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

a) the religious or charitable institution makes payment for the materials directly to the vendor; or

b) the materials are purchased on behalf of the religious or charitable institution.

(i) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

5. Purchases not made pursuant to B.4. are assumed to have been made by the contractor and are subject to sales tax.

C. Sales of materials and supplies to contractors for use in out-of-state jobs are taxable unless sold in accordance with Section 59-12-104(33) of Tax Commission Rule R865-19S-44.

D. If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

1. If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

2. The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

E. This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

1. moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

2. manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery; and

3. items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself.

R865-19S-59. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold. For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work.

1. Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items shall be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19S-23 and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place.

R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

D. Sales tax treatment or charges for installing trade fixtures to real property are dealt with in R865-19S-78.

E. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Section 59-12-104.

A. The tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

1. By specific exemption, the following meal sales are exempt from taxation:

a. public elementary and secondary school meals, whether

sold to students or the public; and

b. inpatient meals provided at medical or nursing facilities. Tax must be paid on the purchase price of food by nonexempt medical or nursing facilities.

2. Ingredients which become a component part of meals subject to tax are construed to be purchased for resale.

B. Where no separate charge or specific amount is paid for meals furnished but is included in the membership dues or board and room charges; the club, boarding house, fraternity, sorority, or other place is considered to be the consumer of the items used in preparing such meals.

C. Meals served by religious or charitable institutions, and institutions of higher education are exempt from taxation only if the meals are not available to the general public. The term "available to the general public" is interpreted broadly so as to include any restaurant, cafeteria, or other facility where service is not restricted and monitored for a limited class of people. The following are guidelines for various types of meal sales:

1. Exemption status of employee cafeterias is determined in large measure by the availability of access to nonemployee personnel. In order for an exemption to apply, access to either the specific eating area or the overall building in which the eating facility is located must be controlled and monitored. Merely posting signs stating that a cafeteria is for use only by employees is not sufficient.

2. Meals sold in cafeterias, restaurants, and other facilities at institutions of higher education are subject to taxation if access is made available to the general public. The requirements outlined in C.1. for employee cafeterias apply to facilities operated by institutions of higher education. Meals sold and pre-paid pursuant to a room and board contract are not subject to taxation.

3. Meals sold or furnished at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore tax exempt.

R865-19S-62. Meal Tickets, Coupon Books, and Merchandise Cards Pursuant to Utah Code Ann. Section 59-12-103.

A. Meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold. Tax is to be added at the subsequent selection and delivery of the merchandise or services if an additional charge is made.

R865-19S-63. Sales of Memorial Markers Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tombstones and grave markers, which are embedded in sod or a concrete foundation, are considered to be improvements to real property. If the seller furnishes and installs the marker, tax applies to his cost of the marker and to his cost of installation material. If the seller does not install the marker, the transaction is a sale of tangible personal property and the seller must collect tax on the full selling price, including cutting, shaping, lettering, and polishing.

R865-19S-64. Morticians, Undertakers and Funeral Directors Pursuant to Utah Code Ann. Section 59-12-103.

A. Morticians, undertakers, and funeral directors make taxable sales of caskets, vaults, clothing, etc. They also render nontaxable services to their patrons. Their purchase of antiseptics, cosmetics, embalming fluids, and other chemicals used in rendering professional services is taxable.

B. If the books are kept in such a manner as to reflect the sales of tangible personal property separate from the services rendered, the tax attaches only to the sale of tangible personal property. If no separation is made of the tangible personal property and the services rendered, the sales tax is collected upon one-half of the total price of a standard funeral service. This includes the casket, professional services, care of remains, funeral coach, floral car, use of funeral car, use of funeral chapel, and the securing of permits.

1. Clothing, an outside grave vault, and other tangible personal property furnished in addition to the casket must be billed separately and the sales tax collected thereon.

R865-19S-65. Newspapers Pursuant to Utah Code Ann. Section 59-12-103.

A. "Newspaper" means a publication that appears to be a newspaper in the general or common sense. In addition, the publication:

1. must be published at short intervals, daily, or weekly;

2. must not, when its successive issues are put together, constitute a book;

3. must be intended for circulation among the general public; and

4. must contain matters of general interest and report on current events.

B. Purchases of tangible personal property by a newspaper publisher are subject to sales and use tax if the property will be used or consumed in the printing or distribution of the newspaper.

C. A newspaper publisher may purchase tax free for resale any tangible personal property that becomes a component part of the newspaper.

1. Examples of tangible personal property that becomes a component part of the newspaper include newsprint, ink, staples, plastic or paper protective coverings, and rubber bands distributed with the newspaper.

D. Purchases of advertising inserts that will be distributed with a newspaper are exempt from sales and use tax if the inserts are identified with the name and date of distribution of the newspaper. The identification may include a multiple listing of all newspapers that will carry the insert and the corresponding distribution dates.

1. Advertising inserts that are not identified as provided in D. are exempt from sales and use tax if the newspaper maintains a log at its place of business that lists by date and name the inserts included in each publication. The log may reflect all inserts or only the inserts not otherwise identified with the newspaper in accordance with D.

R865-19S-66. Optometrists, Opticians, and Ophthalmologists Pursuant to Utah Code Ann. Section 59-12-103.

A. Optometrists and ophthalmologists are deemed to be

persons engaged primarily in rendering personal services. These services consist of the examination and treatment of eyes. Glasses, contact lenses, or other tangible personal property such as sunglasses, or cleaning solutions sold by optometrists and ophthalmologists are taxable and tax must be collected from the patient or buyer. Invoices or receipts must show the charges for personal services separate from the charges for tangible personal property and the sales tax thereon. If an optometrist or ophthalmologist does not provide separate charges for personal services and sales of tangible personal property, sales tax shall be charged on the entire amount.

B. All sales of tangible personal property to optometrists or ophthalmologists for use or consumption in connection with their services are subject to sales or use tax.

C. Opticians are makers of or dealers in optical items and instruments and fill prescriptions written by optometrists and ophthalmologists. Opticians are engaged in the business of selling tangible personal property and personal services rendered by them are considered as merely incidental thereto. Opticians are required to collect the sales tax on all their sales of tangible personal property.

R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Donors of articles of tangible personal property, which are given away as premiums or otherwise, are regarded as the users or consumers thereof and the sale to them is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations who would qualify for exemption under R865-19S-43 or R865-19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property which is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of such premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property which is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

F. Manufacturer rebates on sales of tangible personal property are considered as a discount and the taxable amount is the net amount paid by the customer after deducting the rebate. If the manufacturer's rebate is certain at the time of sale, tax should be charged only on the net amount of the sale; otherwise, tax is charged on the total before the rebate credit, and then later refunded to the customer when proof of rebate is given to the dealer for his file.

1. If the rebate is applied as part of the down payment, it must be segregated on the buyer's order, invoice, or other sales document from any cash down payment. Since the tax base for collection is reduced by the amount of the rebate, the rebate must be shown separately and identified for sales tax computation and subsequent audit verification. Care must be taken to avoid a double deduction if the gross sales price on the sales document has already been reduced by the rebate amount.

G. If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any excess sales tax collected.

H. Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two $6 meals, but the value of the free meal is limited to $5, the $12 is rung up and the $5 deducted, resulting in a taxable sale of $7.

R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Persons engaged in occupations and professions which primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services. Physicians, dentists, beauticians, barbers, etc., are examples of persons in this category.

B. Prescription medicines are exempt from sales and use taxes.

R865-19S-71. Transportation Charges in Connection With the Sale of Tangible Personal Property Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. To qualify for the sales tax exemption for movements of freight by common carrier, transportation charges must satisfy all of the following conditions:

1. Shipment must take place by means of common carrier.

2. Charges must be segregated and listed separately.

3. Charges must reflect the actual cost of shipping the particular tangible personal property by common carrier.

4. Shipment of the tangible personal property must take place after passage of title.

a) Shipment of the tangible personal property takes place after passage of title if the terms of the sale or lease are F.O. B. origin or F.O.B. shipping point.

b) If the invoice does not indicate an F.O.B. point, and a common carrier is used, it is assumed the terms are F.O.B. origin.

c) In all other cases, the shipment of tangible personal property takes place before passage of title.

B. If shipment of the tangible personal property occurs before the passage of title, shipping costs, to the extent included in the sales price of the item, and regardless of whether they are segregated on the invoice, shall be included in the sales and use

tax base.

R865-19S-72. Trade-ins and Exchanges Pursuant to Utah Code Ann. Section 59-12-102.

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any consideration valued in money which changes hands.

B. For example, if a car is sold for $8,500 and a credit of $6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or $2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and when it takes place.

R865-19S-73. Trustees, Receivers, Executors, Administrators, Etc. Pursuant to Utah Code Ann. Section 59-12-103.

A. Trustees, receivers, assignees, executors, and administrators, who -- by virtue of their appointment -- operate, manage, or control a business making taxable sales or leases of tangible personal property, or performing taxable services, must collect and remit sales tax on the total taxable sales even though such sales are made in liquidation.

R865-19S-74. Vending Machines Pursuant to Utah Code Ann. Section 59-12-104.

A. Persons operating vending machines are deemed to be retailers and selling articles of tangible personal property. The total sales from vending machine operations are considered the total selling price of the tangible personal property distributed in connection with their operations and must be reported as the amount of sales subject to tax.

B. Persons operating vending machines selling food, beverages, and dairy products in which the proceeds of each sale do not exceed $1, and who do not report an amount equal to 150% of the cost of items as goods consumed, are subject to the requirements of A.

C. For purposes of the 150% of cost formula in Section 59-12-104(3), "cost" is defined as follows.

1. In the case of retailers, cost is the total purchase price paid for products, including any packaging and incoming freight.

2. In the case of a manufacturer, cost includes the following items:

a) acquisition costs of materials and packaging, including freight;

b) direct manufacturing labor; and

c) utility expenses, if a sales tax exemption has been granted on utility purchases.

D. Operators of vending machines, if they so desire, may divide the tax out and sell items at fractional parts of a cent, providing their records so indicate.

E. Where machines vending taxable items are owned by persons other than the proprietor of a place of business in which the machine is placed and the person owning the machine has control over the sales made by the machine, evidenced by collection of the money, the owner is required to secure a sales tax license. One license is sufficient for all such machines. A statement in substantially the following form must be conspicuously affixed upon each vending machine:

"This machine is operated under Utah Sales Tax License No. "

R865-19S-75. Sales by Photographers, Photo Finishers, and Photostat Producers and Engravers Pursuant to Utah Code Ann. Section 59-12-103.

A. Photographers, photofinishers, and photostat producers are engaged in selling tangible personal property and rendering services such as developing, retouching, tinting, or coloring photographs belonging to others.

1. Persons described in this rule must collect tax on all of the above services and on all sales of tangible personal property, such as films, frames, cameras, prints, etc.

B. Sales of tangible personal property by photoengravers, electrotypers, and wood engravers to printers, advertisers, or other persons who do not resell such property but use or consume it in the process of producing printed matter are taxable sales. The value or worth of the services or processing which go into their production is of no moment, and it is immaterial that each sale is upon a special order for a particular customer.

1. Electrotypes and engravings are manufactured articles of merchandise and are sold as such and not as a service. No deduction is allowed on account of the cost of the property sold, labor, service, or any other expense.

R865-19S-76. Painters, Polishers, Car Washers, Etc. Pursuant to Utah Code Ann. Section 59-12-103 and 59-12-104.

A. Charges for painting, polishing, washing, cleaning, and waxing tangible personal property are subject to tax, and no deduction is allowed for the service involved.

B. Sales of paint, wax, or other material which becomes a part of the customer's tangible personal property, to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

C. Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, car washes, etc., are sales to the final consumer and are subject to tax.

R865-19S-78. Charges for Labor to Repair, Renovate, and Install Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. Charges for installation labor.

1. Amounts paid or charged for labor for installing tangible personal property in connection with other tangible personal property are subject to tax.

2. Separately stated charges for labor to install personal property to real property are not subject to tax, regardless of whether the personal property becomes part of the real property. On-site assembly that does not involve affixing the tangible personal property to real property is not installation within the meaning of this rule.

B. Charges for labor to repair, renovate, wash, or clean.

1. Charges for labor to repair, renovate, wash, or clean tangible personal property are subject to sales tax. Parts or materials used to repair, renovate, wash, or clean tangible personal property that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.

a) Labor for cleaning and blocking hats is taxable under the provisions of the act imposing a tax on dry cleaning services.

b) Motor vehicles, trailers, contractors' equipment, drilling equipment, commercial equipment, railroad cars and engines, radio and television sets, watches, jewelry, clothing and accessories, shoes, tires and tubes, office equipment, furniture, bicycles, sporting equipment, boats and household appliances not permanently attached to a house or building are examples of tangible personal property upon which the sales or use tax applies when repaired, washed, cleaned, renovated, or installed in connection with other tangible personal property.

c) Labor charges for cleaning and washing tangible personal property held in resale inventory are not taxable. An example is the cleaning, washing, or detailing of a new or used car in a dealer's inventory.

2. Charges for labor to service, repair or renovate real property, improvements, or items of personal property that are attached to real property so as to be considered real property are not subject to sales tax. The determination of whether parts, materials or other items are sold or used in the service, repair, or renovation of real property shall be made in accordance with R865-19S-58. Exempt labor charges must be separately stated on the invoice or the entire charge for labor and parts is taxable.

a) For purposes of B., fixtures, trade fixtures, equipment, or machinery permanently attached to real property shall be treated as real property while so attached, but shall revert to personal property when severed from the real property.

b) Mere physical attachment is not enough to indicate permanent attachment. Portable or movable items that are attached merely for convenience, stability or for an obvious temporary purpose are considered personal property, even when attached to real property.

c) An item is considered permanently attached if:

(i) attachment is essential to the operation or use of the item and the manner of attachment suggests that the item will remain affixed in the same place over the useful life of the item; or

(ii) removal would cause substantial damage to the item itself or require substantial alteration or repair of the structure to which it is affixed.

d) If an item is attached to real property so that it is treated as real property for purposes of this rule, its accessories are also treated as real property if the accessories are essential to the operation of the item and installed solely to serve the operation of the item.

e) An item or part of an item may be temporarily detached from real property for on-site repairs without losing its real property status, but an item that is detached from the premises and removed from the site temporarily or permanently reverts to personal property.

C. Charges made for lubrication of motor vehicles are taxable as sales of tangible personal property.

D. Sales of extended warranty agreements.

1. Sales of extended warranty agreements or service plans are taxable, and tax must be collected at the time of the sale of the agreement. The payment is considered to be for future repair, which would be taxable. If the extended warranty agreement covers parts as well as labor, any parts that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge under the extended warranty agreement is taxable. Repairs made under an extended warranty plan are exempt from tax, even if the plan was sold in another state.

a) Repair parts provided and services rendered under the warranty agreements or service plans are not taxable because the tax is considered prepaid as a result of taxing the sale of the warranty or service plan when it was sold.

b) If the customer is required to pay for any parts or labor at the time of warranty service, sales tax must be collected on the amount charged to the customer. Sales tax must also be collected on any deductibles charged to customers for their share of the repair work done under the warranty agreement. Parts or materials that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.

2. Extended warranties on items of tangible personal property that are converted to real property are not taxable. However, the taxable nature of parts and other items of tangible personal property provided in conjunction with labor under an extended warranty service shall be determined in accordance with R865-19S-58.

R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.

3. "Trailer" means house trailer, travel trailer, and tent trailer.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

R865-19S-80. Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

A. Definitions.

1.a) "Pre-press materials" means materials that:

(1) are reusable;

(2) are used in the production of printed matter;

(3) do not become part of the final printed matter; and

(4) are sold to the customer.

b) Pre-press materials include film, magnetic media, compact disks, typesetting paper, and printing plates.

2.a) "Printer" means a person that reproduces multiple copies of images, regardless of the process employed or the name by which that person is designated.

b) A printer includes a person that employs the processes of letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, or lettership.

B. Purchases by a printer.

1. Purchases of tangible personal property by a printer are subject to sales and use tax if the property will be used or consumed by the printer.

a) Examples of tangible personal property used or consumed by the printer include conditioners, solvents, developers, and cleaning agents.

2. A printer may purchase tax free for resale any tangible personal property that becomes a component part of the finished goods for resale.

a) Examples of tangible personal property that becomes a component part of the finished goods for resale include glue, stitcher wire, paper, and ink.

3. A printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of the pre-press materials.

4. The tax treatment of a printer's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

C. Sales by a printer.

1. Except as provided in this Subsection C., a printer shall collect sales and use tax on the following:

a) charges for printed material, even though the paper may be furnished by the customer;

b) charges for envelopes;

c) charges for services performed in connection with the printing or the sale of printed matter, such as cutting, folding, binding, addressing, and mailing;

d) charges for pre-press materials purchased tax exempt by the printer; and

e) charges for reprints and proofs.

2. Charges for postage are not subject to sales and use tax.

3. Sales by a printer are exempt from sales and use tax if:

a) the sale qualifies for exemption under Section 59-12-104; and

b) the printer obtains from the purchaser a certificate as set forth in rule R865-19S-23.

4. If the printer's customer is purchasing printed material for resale, but will not resell the pre-press materials, the printer must collect sales and use tax on the pre-press materials.

5. If printed material is shipped outside of the state, charges for pre-press materials are exempt from sales tax as a sale of goods sold in interstate commerce only if the pre-press materials are physically shipped out of state with the printed material. If pre-press materials are retained in the state by the printer for any reason, the pre-press materials do not qualify for the sales tax exemption for goods sold in interstate commerce, and as such, the printer must collect sales tax on the part of the transaction relating to the pre-press materials.

D. If a sale by a printer consists of items that are subject to sales and use tax as well as items or services that are not taxable, the nontaxable items or services must be separately stated on the invoice or the entire sale is subject to sales and use tax.

R865-19S-81. Sale of Art Pursuant to Utah Code Ann. Section 59-12-103.

A. Art dealers and artists selling paintings, drawings, etchings, statues, figurines, etc., to final consumers must collect tax, whether an object is sold from an inventory or is created upon special order. The value or worth of the services to produce the art object are an integral part of the value of the tangible personal property upon completion and no deduction for such services may be made in determining the amount which is subject to tax.

B. Paints, canvases, frames, sculpture ingredients, and items becoming part of the finished product may be purchased tax-free if used in a painting or other work of art for resale.

1. Brushes, easels, tools, and similar items are consumed by the artist, and tax must be paid on the purchase of these items.

R865-19S-82. Demonstration, Display, and Trial Pursuant to Utah Code Ann. Section 59-12-104.

A. Tangible personal property purchased by a wholesaler or a retailer and held for display, demonstration or trial in the regular course of business is not subject to tax.

Examples of this are a desk bought by an office supply firm and placed in a window display, or an automobile purchased by an auto dealer and assigned to a salesman as a demonstrator. Sales tax applies to any rental charges made to the salesman for use of a demonstrator.

B. Sales tax applies to these charges even though all or part of the charge may be waived if such waiver is dependent upon the salesman performing certain services or reaching a certain sales quota or some similar contingency.

C. Sales tax applies to items purchased primarily for company or personal use and only casually used for demonstration purposes.

1. For example, wreckers or service trucks used by a parts department, are subject to tax even though they are demonstrated occasionally. Also, automobiles assigned to nonsales personnel such as a service manager, an office manager, an accountant, an officer's spouse, or a lawyer are subject to tax.

a. For motor vehicle dealers using certain vehicles withdrawn from inventory for periods not exceeding one year, the tax liability is deemed satisfied if the dealer remits sales or use tax on each such vehicle based on its lease value while so used.

(1) Only motor vehicles provided or assigned to company

personnel or to exempt entities qualify for this treatment. For vehicles donated to religious, charitable, or government institutions, see Rule R865-19S-68.

(2) The monthly lease value is the manufacturer's invoice price to the dealer, divided by 60.

(3) Records must be maintained to show when each vehicle is placed in use, to whom assigned or provided, lease value computation, tax remitted, when removed from service and when returned to inventory for resale.

(4) Vehicles used for periods exceeding one year are subject to tax on the dealer's acquisition cost.

2. An exception is an item held for resale in the regular course of business and used for demonstration a substantial amount of time. Records must be maintained to show the manner of demonstration involved if exemption is claimed.

D. Normally, vehicles will not be allowed as demonstrators if they are used beyond the new model year by a new-car dealer or if used for more than six months by a used-car dealer.

1. Tax will apply if these conditions are not met, unless it is shown that these guidelines are not applicable in a given instance. In this case consideration will be given to the circumstances surrounding the need for a demonstrator for a longer period of time.

R865-19S-83. Pollution Control Facilities Pursuant to Utah Code Ann. Section 59-12-104.

A. Since certification of a pollution control facility may not occur until a firm contract has been entered into or construction has begun, tax should be paid on all purchases of tangible personal property or taxable services that become part of a pollution control facility until the facility is certified, and invoices and records should be retained to show the amount of tax paid. Upon verification of the amount of tax paid for pollution control facilities and verification that a certificate has been obtained, the Tax Commission will refund the taxes paid on these purchases.

1. Claims for refund of tax paid prior to certification must be filed within 180 days after certification of a facility. Refund claims filed within this time period will have interest added at the rate prescribed in Section 59-1-402 from the date of the overpayment.

2. If claims for refund are not filed within 180 days after certification of a facility, it is assumed the delay was for investment purposes, and interest shall be added at the rate prescribed in Section 59-1-402 however, interest will not begin to accrue until 30 days after receipt of the refund request.

B. After the facility is certified, qualifying purchases should be made without paying tax by providing an exemption certificate to the vendor.

1. If sales tax is paid on qualifying purchases for certified pollution control facilities, it will be deemed that the overpayment was made for the purpose of investment. Accordingly, interest, at the rate prescribed in Section 59-1-402, will not begin to accrue until 30 days after receipt of the refund request.

C. In the event part of the pollution control facility is constructed under a real property contract by someone other than the owner, the owner should obtain a statement from the contractor certifying the amount of Utah sales and use tax paid by the contractor and the location of the vendors to whom tax was paid, and the owner will then be entitled to a refund of the tax paid and included in the contract.

D. The owner shall apply to the Tax Commission for a refund using forms furnished by the Tax Commission. The claim for refund must contain sufficient information to support the amount claimed for credit and show that the tax has in fact been paid.

E. The owner shall retain records to support the claim that the project is qualified for the exemption.

R865-19S-85. Sales and Use Tax Exemptions for New or Expanding Operations and Normal Operating Replacements Pursuant to Utah Code Ann. Section 59-12-104.

A. Definitions:

1. "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

2. "Machinery and equipment" means:

a) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

b) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(i) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(ii) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

3. "Manufacturer" means a person who functions within a manufacturing facility.

4a) "New or expanding operations" means:

(i) the creation of a new manufacturing operation in this state; or

(ii) the expansion of an existing Utah manufacturing operation if the expanded operation increases production capacity or is substantially different in nature, character, or purpose from that manufacturer's existing Utah manufacturing operation.

b) The definition of new or expanding operations is subject to limitations on normal operating replacements.

c) A manufacturer who closes operations at one location in this state and reopens the same operation at a new location does not qualify for the new or expanding operations sales and use tax exemption without demonstrating that the move meets the conditions set forth in A.4.a). Acquisitions of machinery and equipment for the new location may qualify for the normal operating replacements sales and use tax exemption if they meet

the definition of normal operating replacements in A.5.

5. "Normal operating replacements" includes:

a) new machinery and equipment or parts, whether purchased or leased, that have the same or similar purpose as machinery or equipment retired from service due to wear, damage, destruction, or any other cause within 12 months before or after the purchase date, even if they improve efficiency or increase capacity.

b) if existing machinery and equipment or parts are kept for backup or infrequent use, any new, similar machinery and equipment or parts purchased and used for the same or similar function.

B. The sales and use tax exemptions for new or expanding operations and normal operating replacements apply only to purchases or leases of tangible personal property used in the actual manufacturing process.

1. The exemptions do not apply to purchases of real property or items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

2. Purchases of qualifying machinery and equipment or normal operating replacements are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

C. Machinery and equipment or normal operating replacements used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment or normal operating replacements are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

1. research and development;

2. refrigerated or other storage of raw materials, component parts, or finished product; or

3. shipment of the finished product.

D. Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment or normal operating replacements purchased for use in the manufacturing operation are eligible for the sales and use tax exemption for new or expanding operations or for normal operating replacements if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

1. Each activity is treated as a separate and distinct establishment if:

a) no single SIC code includes those activities combined; or

b) each activity comprises a separate legal entity.

2. Machinery and equipment or normal operating replacements used in both manufacturing activities and nonmanufacturing activities qualify for the exemption for new or expanding operations or for normal operating replacements only if the machinery and equipment or normal operating replacements are primarily used in manufacturing activities.

E. Charges for labor to repair, renovate, or install tangible personal property shall be taxable or tax exempt as provided in R865-19S-78.

F. The manufacturer shall retain records to support the claim that the machinery and equipment or normal operating replacements are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

G. Vendors are required to obtain a tax exemption certificate upon which the purchaser certifies that the use of the machinery and equipment or normal operating replacements qualifies for exemption under Title 59, Chapter 12. Vendors must obtain a separate tax exemption certificate, or a purchase order that incorporates the appropriate language, including authorized signature, date and title, of the tax exemption certificate, from the purchaser for each purchase of exempt machinery and equipment, at the time of purchase.

H. If a purchase consists of items that are exempt from sales and use tax under this rule and Section 59-12-104, and items that are subject to tax, the tax exempt items must be separately stated on the invoice or the entire purchase will be subject to tax.

R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.

A. Definitions:

1. "Cash equivalent" means either:

a) cash;

b) wire transfer; or

c) cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and ending the following June 30.

3. "Mandatory filer" means a vendor who meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous year" means the tax liability for the previous calendar year.

B. The determination that a vendor is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A vendor who meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. Vendors who are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the vendor no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. Vendors who elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers.

3. Vendors who elect to file and remit sales taxes on a monthly basis are entitled to reimbursement for the cost of collecting and remitting sales taxes on a monthly basis.

F. Vendors who are mandatory filers may request deletion

of their mandatory filer designation if they do not expect to accumulate a $50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the $50,000 tax liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a vendor's request is approved and the vendor does accumulate a $50,000 sales tax liability, a similar request by that vendor the following year shall be denied.

G. No reimbursement is allowed for the monthly filing and remittance of waste tire fees or transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes.

H. Only vendors who file monthly and remit on a timely basis and in the required manner, are entitled to reimbursement for the cost of collecting and remitting sales taxes.

I. Vendors who are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those vendors who are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. Vendors who receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working days prior to the due date of the sales tax.

J. Vendors who are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

K. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.

1. Except as provided in K.2., vendors shall remit their EFT payment by an ACH-debit transaction through the National Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access to its bank account or extenuating circumstances exist, a vendor may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

L. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in K. Use of any manner of remittance other than that specified in K. must be approved by the Tax Commission prior to its use.

R865-19S-87. Government-Owned Tooling and Equipment Exemption Pursuant to Utah Code Ann. Section 59-12-104.

A. As used in Utah Code Ann. Section 59-12-104(6), and for the purpose of this rule:

1. "Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, other equipment, and other similar manufacturing aids generally available as stock items.

2. "Special Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.

3. "Support equipment" means implements or devices that are required to inspect, test, service, adjust, calibrate, appraise, transport, safeguard, record, gauge, measure, repair, overhaul, assemble, disassemble, handle, store, actuate or otherwise maintain the intended functional operation status of an aerospace electronic system.

4. "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units may be electrical, electronic, hydraulic, pneumatic, or mechanical. Or they may be items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar supplies or services.

B. The effective date of this rule is July 1, 1986.

R865-19S-90. Telephone Service Pursuant to Utah Code Ann. Section 59-12-103.

A. Definitions.

1. "Interstate" means a transmission that originates in this state but terminates in another state, or a transmission that originates in another state but terminates in this state.

2. "Intrastate" means a transmission that originates and terminates in this state, even if the route of the transmission signal itself leaves and reenters the state. Prepaid telephone services or service contracts are presumed to be used for intrastate telephone services unless the service contract is sold exclusively for use in interstate communications.

3. "Private communication services" means a telephone service that entitles subscribers or users to use a communication line or channel or group of lines or channels.

4. "Two-way transmission" includes any services provided over a public switched network.

B. Taxable telephone service charges include:

1. subscriber access fees;

2. charges for optional telephone features, such as call waiting, caller ID, and call forwarding; and

3. nonrecurring charges that are ordinarily charged to subscribers only once or only under exceptional circumstances, including charges to:

a) establish, change, or disconnect telephone service or optional features; and

b) install or repair telephone equipment that retains its character as tangible personal property under R865-19S-58 and R865-19S-78.

C. Nontaxable charges include:

1. refundable subscriber deposits, interest, and late payment penalties;

2. charges for interstate long distance or toll calls;

3. telephone answering services received or relayed by a human operator;

4. charges to install or repair subscriber equipment that is regarded as real property under R865-19S-58 and R865-19S-78;

5. charges levied on subscribers to fund or subsidize special telephone services, including 911 service, special communications services for the deaf, and special telephone service for low income subscribers;

6. subscriber charges for cable or satellite television transmissions, unless those charges are considered user fees under R865-19S-108;

7. contributions in aid of construction, land development fees, payments in lieu of land development fees, and special plant construction and relocation charges; and

8. charges for one-way pager services.

R865-19S-91. Sales of Tangible Personal Property to Government Project Managers and Supply Contractors Pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.

A. Sales of tangible personal property or services as defined in Sections 59-12-102 and 59-12-103 to federal, state, or municipal government facilities managers or supply contractors, who are not employees or agents of that government entity, are subject to sales or use tax if the manager or contractor uses or consumes the property. Tax is due even though a contract vests title in the government.

B. A person qualifies as an agent for purchasing on behalf of a government entity if the person and the government entity enter into a contract that includes the following conditions:

1. The person is officially designated as the government entity's purchasing agent by resolution of the government entity;

2. The person identifies himself as a purchasing agent for the government entity;

3. The purchase is made on purchase orders that indicate the purchase is made by or on behalf of the government entity and the government entity is responsible for the purchase price;

4. The transaction is approved by the government entity; and

5. Title passes directly to the government entity upon purchase.

C. If the government entity makes a direct payment to the vendor for the tangible personal property or services, the sale is made to the government entity and not to the facilities manager or the supply contractor. In that case, the sale is not subject to sales tax.

D. Certain purchases made by aerospace or electronic industry contractors dealing with the United States are exempted by Section 59-12-104(17) and further covered by R865-19S-87. Therefore, these industry purchases are not covered by this rule.

R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Section 59-12-103.

A. Definitions:

1. "Canned computer software" or "prewritten computer software" means a program or set of programs that can be purchased and used without modification and has not been prepared at the special request of the purchaser to meet their particular needs.

2. "Custom computer software" means a program or set of programs designed and written specifically for a particular user. The program must be customer ordered and can incorporate preexisting routines, utilities or similar program components. The addition of a customer name or account titles or codes will not constitute a custom program.

3. "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

4. "License agreement" means the same as a lease or rental of computer software.

5. "Tangible personal property" includes canned computer software.

B. The sale, rental or lease of canned or prewritten computer software constitutes a sale of tangible personal property and is subject to the sales or use tax regardless of the form in which the software is purchased or transferred. Payments under a license agreement are taxable as a lease or rental of the software package. Charges for software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of canned or prewritten software are taxable.

C. The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

D. Charges for services to modify or adapt canned computer software or prewritten computer software to a purchaser's needs or equipment are not taxable if the charges are separately stated and identified.

E. The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

F. This rule cites the most common types of transactions involving computer software and it should not be construed to be all inclusive but merely illustrative in nature.

R865-19S-93. Waste Tire Recycling Fee Pursuant to Utah Code Ann. Section 19-6-808.

A. The waste tire recycling fee shall be paid by the retailer to the State Tax Commission at the same time and in the same manner as sales and use tax returns are filed. The sales tax account number will also be the recycling fee account number. A separate return form will be provided.

1. The tire recycling fee will be imposed at the same time the sales tax is imposed. For example, if tires are purchased for resale either as part of a vehicle sale or to be sold separately by a vehicle dealer, the recycling fee and the sales tax would be collected by the dealer at the time the vehicle is sold. If sales tax is paid to a tire retailer by a vehicle dealer when tires are purchased, the recycling fee will also be paid by the vehicle dealer to the tire retailer.

2. Where tires are sold to entities exempt from sales tax, the exempt entity must still pay the recycling fee.

B. The recycling fee is not considered part of the sales price of the tire and is not subject to sales or use tax.

C. Wholesalers purchasing tires for resale are not subject

to the fee.

D. Tires sold and delivered out of state are not subject to the fee.

E. Tires purchased from out of state vendors are subject to the fee. The fee must be reported and paid directly to the Tax Commission in conjunction with the use tax.

R865-19S-94. Tips, Gratuities and Cover Charges Pursuant to Utah Code Ann. Section 59-12-103.

A. Restaurants, cafes, clubs, private clubs, and similar businesses must collect sales tax on tips or gratuities included on a patron's bill and which are required to be paid, unless the total amount of the gratuity or tip is passed on to the waiter or waitress who served the customer. Tax on the required gratuity is due from private clubs, even though the club is not open to the public. Voluntary tips left on the table or added to a credit card charge slip are not subject to sales tax.

B. Cover charges to enter a restaurant, tavern, club or similar facility are taxable as an admission to a place of recreation, amusement or entertainment.

R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.

A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(i).

B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30 consecutive days.

C. The transient room tax is not subject to sales tax.

R865-19S-98. Sales to Nonresidents of Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Sales to Nonresidents of Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.

A. Definitions.

1. "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or any group or combination, acting as a unit.

2. "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

3. "Vehicle" means a motor vehicle, trailer, semitrailer, off-highway vehicle, boat, boat trailer, or outboard motor.

B. In order to qualify as a nonresident for the purpose of exempting vehicles from sales tax under Subsections 59-12-104(9) and 59-12-104(31), a person may not:

1. be a resident of this state. The fact that a person leaves the state temporarily is not sufficient to terminate residency;

2. be engaged in intrastate business within this state;

3. maintain a vehicle with this state designated as the home state;

4. except in the case of a tourist temporarily within this state, own, lease, or rent a residence or a place of business within this state, or occupy or permit to be occupied a Utah residence or place of business;

5. except in the case of an employee who can clearly demonstrate that the use of the vehicle in this state is to commute to work from another state, be engaged in a trade, profession, or occupation or accept gainful employment in this state;

6. allow the purchased vehicle to be kept or used by a resident of this state; or

7. declare residency in Utah to obtain privileges not ordinarily extended to nonresidents, such as attending school or placing children in school without paying nonresident tuition or fees, or maintaining a Utah driver's license.

C. A nonresident owner of a vehicle described in Section 59-12-104(9) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

D. A nonresident owner of a vehicle described in Subsection 59-12-104(31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state does not exceed 14 days in any calendar year and is nonbusiness in nature.

E. Vehicles are deemed not used in this state beyond the necessity of transporting them to the borders of this state if purchased by:

1. a nonresident student who will be permanently leaving the state within 30 days of the date of purchase; or

2. a nonresident member of the military stationed in Utah, but with orders to leave the state permanently within 30 days of the date of purchase.

F. Purchasers claiming this exemption must complete a nonresident affidavit. False, misleading, or incomplete responses shall invalidate the affidavit and subject the purchaser to tax, penalties, and interest.

G. A dealer of vehicles who accepts an incomplete affidavit, may be held liable for the appropriate tax, interest, and penalties.

H. A dealer of vehicles who accepts an affidavit with information that they know or should have known is false, misleading or inappropriate may be held liable for the appropriate tax, interest, and penalties.

R865-19S-99. Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104(26), (28).

A. No sales or use tax is due on vehicles purchased in another state by a resident of that state and transferred into this state if all sales or use taxes required by the prior state for the purchase of the vehicle have been paid. A valid, nontemporary registration card shall serve as evidence of such payment.

R865-19S-100. Procedures for Exemption from and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.

A. For purposes of Section 59-12-104.1(2)(b)(iii), "contract" does not include a purchase order.

B. Religious and charitable institutions may apply to the Tax Commission for a refund of Utah sales and use taxes paid no more often than on a monthly basis. Refund applications should be returned to the Tax Commission by the tenth day of

the month for a timely refund.

C. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

D. Religious and charitable institutions shall substantiate requests for refunds of sales and use taxes paid by retaining a copy of a receipt or invoice indicating the amount of sales or use taxes paid for each purchase for which a refund of taxes paid is claimed.

E. All supporting receipts required by D. must be provided to the Tax Commission upon request.

F. Original records supporting the refund claim must be maintained for three years following the date of refund.

G. Failure to pay any penalties and interest assessed by the Tax Commission may subject the institution to a deduction from future refunds of amounts owed, or revocation of the institution's exempt status as a religious or charitable institution, or both.

R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.

A. Document preparation fees assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax if they satisfy both of the following conditions:

1. Fees must be separately identified and segregated.

2. Fees may not be included in the total sale price upon which sales tax is calculated and collected.

B. State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.

R865-19S-102. Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104.

A. When the sale of exempt electricity to a ski resort is not separately metered and accounted for in utility billings, the ski resort shall identify a methodology for the calculation of exempt electricity purchases, and shall submit that methodology to Internal Customer Support, Customer Service Division, of the Tax Commission for approval prior to its use.

B. When exempt electricity is not separately metered and accounted for in utility billings, a ski resort shall pay sales tax on all electricity at the time of purchase. The ski resort may then take a credit on its sales tax return for taxes paid on electricity that is determined to be exempt under this rule.

C. The provisions of this rule shall be retrospective to July 1, 1996.

R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307.

A. Definitions.

1. "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

2. "Supplying taxable energy" means the selling of taxable energy to the user of the taxable energy.

B. Except as provided in C., the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

C. If the arm's length sales price does not include all components of delivered value, any component of the delivered value that is not included in the sales price shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

D. The point of sale or use of the taxable energy shall normally be the location of the taxpayer's meter unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

E. An energy supplier shall collect the municipal energy sales and use tax on all component parts of the delivered value of the taxable energy for which the energy supplier bills the user of the taxable energy.

F. A user of taxable energy is liable for the municipal energy sales and use tax on any component of the delivered value of the taxable energy for which the energy supplier does not collect the municipal energy sales and use tax.

G. A user of taxable energy who is required to pay the municipal energy sales and use tax on any component of the delivered value of taxable energy shall remit that tax to the Tax Commission:

1. on forms provided by the Tax Commission, and

2. at the time and in the manner sales and use tax is remitted to the Tax Commission.

H. A person that delivers taxable energy to the point of sale or use of the taxable energy shall provide the following information to the Tax Commission for each user for whom the person does not supply taxable energy, but provides only the transportation component of the taxable energy's delivered value:

1. the name and address of the user of the taxable energy;

2. the volume of taxable energy delivered to the user; and

3. the entity from which the taxable energy was purchased.

I. The information required under H. shall be provided to the Tax Commission:

1. on or before the last day of the month following each calendar quarter; and

2. for each user for whom, during the preceding calendar quarter, the person did not supply taxable energy, but provided only the transportation component of the taxable energy's delivered value.

R865-19S-104. County Option Sales Tax Distribution Pursuant to Utah Code Ann. Section 59-12-1102.

A. The $75,000 minimum annual distribution required under Section 59-12-1102 shall be based on sales tax amounts collected by the counties from January 1 through December 31.

B. Any adjustments made to ensure the required minimum distribution shall be reflected in the February distribution immediately following the end of the calendar year.

R865-19S-105. Procedures for Refund of Sales and Use Taxes Paid on Food Donated to a Qualified Emergency Food Agency Pursuant to Utah Code Ann. Section 59-12-902.

A. A qualified emergency food agency may apply to the

Tax Commission for a refund of Utah sales and use taxes paid on food donated to that entity no more often than on a monthly basis. Refund applications should be submitted to the Tax Commission by the tenth day of the month for a timely refund.

B. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

C. Original records supporting the refund claim must be maintained by the qualified emergency food agency for three years following the date of refund.

D. Failure to pay any penalties and interest assessed by the Tax Commission may subject the qualified emergency food agency to a deduction from future refunds of amounts owed.

R865-19S-107. Reporting of Exempt Sales or Purchases Pursuant to Utah Code Ann. Section 59-12-105.

A. The amount of purchases or uses exempt under Sections 59-12-104(14), 59-12-104(40), and 59-12-104(41) shall be reported to the commission by the manufacturer or ski resort, as appropriate, that purchases the items exempt from sales or use tax under those sections.

B. The amount of sales or uses exempt under Section 59-12-104(20) shall be reported to the commission by the vendor that makes the retail sale of the items exempted from sales or use tax under that section.

R865-19S-108. User Fee Defined Pursuant to Utah Code Ann. Section 59-12-103.

A. For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;
2. television program; or
3. cable or satellite broadcast.

B. The provisions of this rule are effective for transactions occurring on or after October 1, 1999.

R865-19S-109. Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.

1. Except as provided in E., a veterinarian must collect sales tax on tangible personal property that the veterinarian resells.

B. Purchases of tangible personal property by a veterinarian are subject to sales and use tax if the property will be used or consumed in the veterinarian's practice.

C. The determination of whether a veterinarian's purchase of food, medicine, or vitamins is a sale for resale or a purchase that will be used or consumed in the veterinarian's practice shall be made by the veterinarian.

1. For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with A.

2. For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with B.

D. A veterinarian is not required to collect sales and use tax on:

1. medical services;
2. boarding services; or
3. grooming services required in connection with a medical procedure.

E. Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

1. the sales are exempt from sales and use tax under Section 59-12-104; and
2. the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

F. If a sale by a veterinarian consists of items that are subject to sales and use tax as well as items or services that are not taxable, the nontaxable items or services must be separately stated on the invoice or the entire sale is subject to sales and use tax.

R865-19S-110. Advertisers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

A. "Advertiser" means a person that places advertisements in a publication, broadcast, or electronic medium, regardless of the name by which that person is designated.

1. A person is an advertiser only with respect to items actually placed in a publication, broadcast, or electronic medium.

B. All purchases of tangible personal property by an advertiser are subject to sales and use tax as property used or consumed by the advertiser.

C. The tax treatment of an advertiser's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

D. An advertiser's charges for placement of advertisements are not subject to sales and use tax.

R865-19S-111. Graphic Design Services Pursuant to Utah Code Ann. Section 59-12-103.

A. Graphic design services are not subject to sales and use tax:

1. if the graphic design is the object of the transaction; and
2. even though a representation of the design is incorporated into a sample or template that is itself tangible personal property.

B. Except as provided in C., if a vendor provides both graphic design services and tangible personal property that incorporates the graphic design:

1. there is a rebuttable presumption that the tangible personal property is the object of the transaction; and
2. the vendor must collect sales and use tax on the graphic design services and the tangible personal property.

C. A vendor that provides both graphic design services and tangible personal property that incorporates the graphic design is not required to collect sales tax on the graphic design services if the vendor subcontracts the production of the tangible personal property to an independent third party.

D. A vendor that provides nontaxable graphic design services and taxable tangible personal property under C. must separately state the nontaxable graphic design services or the entire sale is subject to sales and use tax.

R865-19S-112. Confirmation of Purchase of Admission or User Fee Relating to the Olympic Winter Games of 2002 Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. For purposes of the sales and use tax exemption for amounts paid or charged as admission or user fees relating to the Olympic Winter Games of 2002:

1. Except as provided in 2., the Salt Lake Organizing Committee (SLOC), or a person designated by SLOC, is deemed to have sent a purchaser confirmation of the purchase of an admission or user fee relating to the Olympic Winter Games of 2002 at the time SLOC or its designee receives a payment for the purchase.

2. In the case of a purchase of tickets designated as lottery tickets by SLOC, SLOC or its designee are deemed to have sent confirmation of the purchase at the time the purchaser accepts the tickets available to him or her through that process.

KEY: charities, tax exemptions, religious activities, sales tax
September 5, 2001 **9-2-1702**
Notice of Continuation May 22, 1997 **9-2-1703**
10-1-303
10-1-306
10-1-307
19-6-808
26-32a-101 through 26-32a-113
59-1-210
59-12
59-12-103
59-12-104
59-12-105
59-12-107
59-12-301
59-12-352
59-12-353

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children age 13 to 18 years if the child is:

(i) physically or mentally incapable of self-care as determined by a medical doctor, doctor of osteopathy or licensed or certified psychologist; and/or

(ii) under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children will be prioritized at the top of the list and will be served first. "Special needs child" means a child identified by the Department of Human Services, Division of Services to People with Disabilities, as having a physical or mental disability requiring special child care services.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) Neither the Department nor the state of Utah are liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(10) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC.

(11) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the re-certification forms are signed and returned to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) In addition to the requirements for reporting other material changes that might affect eligibility, outlined in R986-100-113, a client is responsible for reporting a change in the client's need for child care, a change in the client's child care provider, and a change in the amount a provider charges for child care, to the Department within 10 days of the change.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days the decrease will be made effective beginning the next month and sums received in the month in which the change was reported will not be treated as an overpayment. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) Any client receiving any type of CC who is not receiving full court ordered child support must cooperate with ORS in obtaining child support from the absent parent. Child support payments received by the client count as unearned income. If a client's case was closed for failure to cooperate with ORS it cannot be reopened until ORS notifies the Department that the client is cooperating.

(9) All clients receiving CC must cooperate in good faith with the Department in establishing paternity unless there is good cause for not cooperating.

R986-700-704. Establishment of Paternity.

(1) If ORS notifies the Department that a client is not cooperating with the establishment of paternity, the client may appeal to a Department ALJ by following the procedures for hearings set forth in R986-100.

(2) The ALJ will make a determination on the question of whether or not the client is making a good faith effort to cooperate based on the same criteria ORS uses in FEP cases.

(3) The procedure and rules for establishing good cause for not cooperating in the establishment of paternity are the

same as in R986-200. If the client appeals both a good faith determination and alleges good cause for not cooperating, the ALJ will join the two issues together and make a decision on the questions of good faith and good cause at the same hearing.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) licensed and accredited providers:

(i) licensed homes;

(ii) licensed family group homes; and

(iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers; or

(ii) related to the client and/or the child. Related in this paragraph is as defined in R986-700-706(3).

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) All clients who were receiving child care prior to January 1, 2001, will be granted a grace period in which to find an eligible provider. The length of the grace period will be determined by the Department but in no event will it extend later than June 30, 2001.

(3) If a new client has a provider who is providing child care at the time the client applies for child care assistance or has provided child care in the past and has an established relationship with the child(ren), but the provider is not currently eligible, the client may receive child care assistance for a period not to exceed three months if the provider is willing to become an eligible provider and actively pursues eligibility.

(4) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides; or

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care; or

(d) if the provider lives in an area where the Department of Health lacks jurisdiction, which includes tribal lands, to provide licensing or certification; or

(e) in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(5) If an exception is granted under paragraph (4) above, the exception will be reviewed at the client's next review date to determine if an exception is still appropriate.

(6) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and physically and mentally capable of providing care to children;

(b) the provider's home is equipped with hot and cold running water, toilet facilities, and is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors and fire extinguishers on all floors of the house where children are provided care;

(d) there are no individuals residing in the home who have felony criminal convictions, or misdemeanor convictions which are offenses against a person, or have been subject to a substantiated finding of child abuse or neglect by the Utah Department of Human Services, Division of Child and Family Services or a court;

(e) there is a telephone in operating condition with a list of emergency numbers located next to the phone which includes the phone numbers for poison control and for the parents of each child in care;

(f) food will be provided to the child in care of sufficient amount and nutritional value to provide the average daily nutrient intake required. Food supplies will be maintained to prevent spoilage or contamination. Any allergies will be noted and care given to ensure that the child in care is protected from exposure to those items; and

(g) the child in care will be immunized as required by the Utah Immunization Act and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(7) The following providers are not eligible for receipt of a CC payment:

(a) a member of household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state; and

(h) a provider who has committed fraud as a provider, as determined by ORS or by a court.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the State of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) The Department will pay related providers at the exempt rate regardless of whether or not the provider has a certificate or license. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, uncles, or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix

grand, great, great-great, or great-great-great.

(4) The provider is entitled to know the date on which payment for CC was made to the parent and the amount of the payment.

(5) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received. Provider case records will be maintained according to Office of Licensing standards.

R986-700-707. Subsidy Deduction.

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent must pay the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

R986-700-708. FEP, and Diversion CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

(3) Diversion CC is available for clients who have received a diversion payment from FEP. There is no subsidy deduction for the months covered by the FEP diversion payment. If the client is working a minimum of 15 hours per week in the two months immediately following the period covered by the diversion payment, the client is not subject to a subsidy deduction until the third month after the period covered by the diversion payment.

R986-700-709. Employment Support (EC) CC.

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC.

(a) If the household has only one parent, the parent must be employed a minimum of 15 hours per week.

(b) If the family has two parents, CC can be provided if:

(i) one parent is employed a minimum of 35 hours per week and the other parent is employed a minimum of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(ii) one parent is employed and the other parent cannot work or provide child care because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The individual claiming incapacity must be receiving SSI, be 100 percent disabled by the VA or provide proof, by way of a report signed by a medical doctor, doctor of osteopath or licensed/certified psychologist, which states that:

(A) the parent cannot work; and

(B) the incapacity prevents the parent from caring for a child; and

(C) the incapacity is expected to last at least 30 days.

(2) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. If the prevailing community standard is below minimum wage, the employed parent client must make at least the prevailing community standard.

(3) If a parent was receiving FEP or FEPTP, and their financial assistance was terminated due to increased income, and the parent is otherwise eligible for ES CC, the subsidy deduction will not be taken for the two months immediately following the termination of FEP or FEPTP, provided the client works a minimum of 15 hours per week. The third month following termination of FEP or FEPTP CC is subject to the subsidy deduction.

R986-700-710. Income and Asset Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income and assets must be counted to establish eligibility, except a specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income and assets of the specified relatives in the household must be counted;

(b) what is counted as income and assets. The asset limit for ES CC is $8,000 after allowable deductions; and

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, 56 percent of the state median income.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

R985-700-711. CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in

education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) Child care will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree in a marketable occupation.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate.

(9) In a two-parent family receiving CC for education or training activities, the monthly CC subsidy cannot exceed the established monthly local market rates.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship, income, and asset eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

(5) When a homeless family presents a referral from a recognized agency, the Department will, if possible, schedule the application interview within three working days of the date of the application.

R986-700-713. Amount of CC Payment.

(1) CC will be paid at the lower of the following levels:

(a) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(b) the rate established by the provider for services; or

(c) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

(2) An enhanced CC payment is available to clients who are participating more than 172 hours per month. The enhanced subsidy cannot exceed $100 more than the maximum monthly local market rate for the type of provider used by the client and in no event can an enhanced subsidy payment exceed the accredited center rate for infant care. A two-parent family receiving CC for education or training activities is not eligible for the enhanced CC subsidy.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name. The check is mailed to the client. In the event of an emergency, a payment up to a maximum of $125 can be made on the Horizon card. Emergency payments can only be made where a parent is in danger of not being able to obtain necessary child care if the parent is required to wait until the two party check can be issued.

(2) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

R986-707-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible.

(2) If the Department has reason to believe that a CC overpayment has occurred, a referral for collection will be made to ORS.

(3) If ORS determines that the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be disqualified from further receipt of CC:

(a) for a period of one year for the first occurrence of fraud;

(b) for a period of two years for the second occurrence of fraud; and

(c) for life for the third occurrence of fraud.

(4) If a client receives an overpayment but was not at fault in creating the overpayment, the client will be responsible for repayment but there is no disqualification or ineligibility period.

(5) If ORS determines that the client was at fault in the creation of an overpayment for any reason other than fraud in

paragraph (3) above, the client will be given an opportunity to repay the overpayment without a disqualification or ineligibility period for the first occurrence. If there is a second fault overpayment for reasons other than fraud in (3) above and the first overpayment has not been paid off, the client will be ineligible for CC until both overpayments have been satisfied. If the second overpayment occurred after the first overpayment was repaid in full, the second overpayment will not result in disqualification or ineligibility.

(6) If the client does not cooperate with ORS in its investigation or collection efforts, the Department will terminate CC upon notification from ORS that the client is not cooperating.

(7) These disqualification and ineligibility periods are in lieu of, and not in addition to, the disqualification periods found in R986-100-117.

(8) If the Department has reason to believe an overpayment has occurred, a referral to ORS has been made, and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined by ORS.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled. For example: A client enrolled for 10 hours of classes each week may not receive more than 10 hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

(6) On a case-by-case basis, the Department may fund child care for children with disabilities at a higher rate if the needs of the child and provider necessitate.

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